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Presidential Documents

Title 3—

The President

Proclamation 6007 of August 14, 1989

National Senior Citizens Day, 1989

By the President of the United States of America

A Proclamation

Our Nation's senior citizens are men and women who have helped make the 20th century the American Century. Over the years, these men and women have made great sacrifices to defend the cause of freedom around the world and to build strong families and communities here at home.

Today, our Nation continues to rely upon the knowledge, strength, and energy of our senior citizens. These men and women are grandparents who enrich our families with their love and guidance; they are neighbors who support our churches, schools, and local charities as volunteers; and they are veterans who remind us that peace and freedom are great yet precious blessings, won at a very high price and kept by the vigilant and the brave.

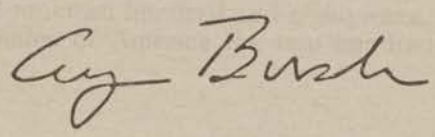
Millions of older Americans are also valuable members of our Nation's work force. Today, many seniors are working well past the traditional "retirement age" as both they and their employers recognize the benefits of their seasoned wisdom and years of experience.

All senior citizens—whether actively involved in business and community affairs or quietly devoted to their families and neighbors—deserve our gratitude and respect. They have shared with us the acquired wisdom of the ages, and they have shown us the meaning of faith, courage, and love of country.

In recognition of our Nation's senior citizens and the many contributions they have made to our society, the Congress, by House Joint Resolution 225, has requested that the President issue a proclamation designating the third Sunday of August 1989 as "National Senior Citizens Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Sunday, August 20, 1989, as National Senior Citizens Day. I call upon the people of the United States to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



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Presidential Documents

Proclamation 6008 of August 14, 1989

National Library Card Sign-Up Month, 1989

By the President of the United States of America

A Proclamation

Our Nation's fourth President, James Madison, once observed that "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." President Madison knew that only an educated and informed public can keep a free and democratic government.

Throughout our Nation's history, libraries have been recognized as an invaluable educational tool. Whether located in community buildings, schools, or other academic institutions, libraries are an ideal way to share both the collected wisdom of the ages and recently acquired technical and scientific knowledge. Repositories of literature, information, and ideas, libraries serve as centers of culture and learning in every community.

At their local library, children as well as adults can find books and materials to meet their special needs and interests. Whether reading for pleasure or studying for a particular purpose, a young scholar can discover a wealth of information—and hours of enjoyment—at the library. Libraries also provide books suitable for parents to share with little ones who are still unable to read by themselves. In fact, reading together holds rewards for the entire family.

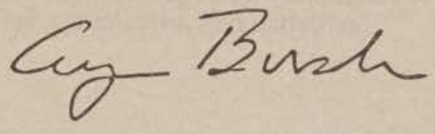
Parents should introduce their children to their local library and encourage them to visit it often. They should ensure that their children sign up for a library card, and they should set a positive example by using their own.

If knowledge can be considered the greatest of all riches, then a library card is a key to a lasting treasure.

In recognition of our Nation's libraries and the importance of owning and using a library card, the Congress, by House Joint Resolution 231, has designated September 1989 as "National Library Card Sign-Up Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 1989 as National Library Card Sign-Up Month. I call upon the libraries, schools, and people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



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Presidential Documents

Proclamation 6009 of August 14, 1989

National Wilderness Week, 1989

By the President of the United States of America

A Proclamation

When our Nation was founded, much of the land that eventually became part of the United States was unspoiled wilderness, teeming with wildlife and rich in natural resources. But after just 100 years, much of the American frontier had virtually disappeared. Railroads crisscrossed the continent, inviting settlement and industry. The rush for land and resources led to almost unchecked development.

The end of the 19th century, however, marked a turning point in the management of America's natural resources. For the benefit of the entire country, the U.S. Government began to reserve selected public land as National Parks, National Forests, and National Wildlife Refuges. In 1924, the Gila National Forest in New Mexico became the first public land allocated specifically for the purpose of preserving the ecological, geological, scientific, and historic value of the wilderness. Forty years later, the desire to protect our Nation's wilderness resource was codified with the signing of the Wilderness Act on September 3, 1964.

This year marks the 25th anniversary of that Act, which established the National Wilderness Preservation System. This System was the first of its kind in the world. Managed by the Departments of Agriculture and the Interior, the System now includes more than 90 million acres of wilderness in 44 States. The Wilderness Act directs that these acres be managed to "secure for the American people of present and future generations the benefits of an enduring resource of wilderness . . . unimpaired for future use and enjoyment." It requires that these areas be "devoted to the public purposes of recreation, scenic, scientific, educational, conservation and historical use."

When the Wilderness Act was passed, many assumed that simply designating an area as wilderness would assure its preservation. However, experience has shown us that preserving these beautiful, untamed lands requires a lasting commitment and cooperation from the public. Every American can demonstrate that commitment by supporting the careful management and protection of our wilderness.

In recognition of the values of wilderness, the Congress by Senate Joint Resolution 67, has designated the week of September 3 through September 9, 1989, as "National Wilderness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of September 3 through September 9, 1989, as National Wilderness Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of August, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

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Rules and Regulations

Federal Register
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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 89-2350]

RIN 3068-AA86

Release of Customer Financial Records by Federal Associations

Date: August 8, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board (the "Bank Board" or "Board") is amending its regulations governing the release of customer financial records by federally chartered savings and loan associations and savings banks ("Federal associations" or "associations"). This final rule would generally authorize a Federal association, whether chartered as a mutual association ("Federal mutual association"), or as a stock association ("Federal stock association"), to disclose, unless the customer objects, the names and addresses of its customers and their savings or loan records ("customer information") to any wholly-owned subsidiary of the Federal association or to other persons if the information to be disclosed is limited to the customers' names and addresses ("customer identification") or is recorded in the public records. The regulation also authorizes a Federal association to disclose to persons other than wholly-owned service corporations customer information that is not recorded in the public records on the prior condition that the Federal association obtains the affirmative consent of the customer prior to the disclosure. Specific exceptions are provided to authorize the release of customer information to third persons under various situations prohibited by the general rule. The amendment would replace the current requirement that Federal mutual associations obtain the prior approval of either the Board or a Supervisory Agent before releasing customer information. Through this amendment, the Board seeks to balance the legitimate business interests of Federal associations in disclosing customer information with reasonable customer expectations of privacy.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Jeffrey Ross Williams, Attorney, (202) 906-6559, Jerome Edelstein, Deputy Director, (202) 906-7057, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Ben F. Dixon, Policy Analyst, (202) 331-4599, Policy Division, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Current Regulations and Office of General Counsel Interpretations

Section 545.131(a) of the Board's regulations sets forth limitations on public disclosure by a Federal mutual association of its "membership list." As used in § 545.131, a "membership list" includes a list of the names of the members of the association, their addresses, their savings account or loan account records, or any data from which information reasonably could be constructed. 12 CFR 545.131(a) (1988). Section 545.131(a)(2) generally prohibits Federal mutual associations from disclosing membership lists without the prior written approval of the Board. The regulation contains exceptions for disclosure to officers of the association and to those persons employed by them in the usual course of the association's business. Section 545.131(a) permits a Supervisory Agent to approve or disapprove an application by a Federal mutual association to release such lists and to specify any terms or conditions for such release. *Id.* § 545.131(a)(3). Section 545.131(b) gives a member of a Federal mutual association the right to inspect only those records of the association pertaining to his or her own savings or loan accounts.[1]

In construing the provisions of § 545.131, the Board's Office of General Counsel ("OGC") has interpreted the regulation to permit disclosure to an "agent" of the association, pursuant to a written agency agreement, where the agent acts as the functional equivalent of an officer or employee conducting the business of the association in its usual course. Disclosure also has been permitted to an association's wholly owned service corporations or its wholly owned subsidiaries, when such release been approved by the Supervisory Agent. Under the authority of Supervisory Agents to specify the terms and conditions of such approval, approval has been conditioned primarily upon the membership list being released to the service corporation or subsidiary pursuant to a written agreement that would protect the members' privacy. *See, e.g.,* OGC Ops. by R. Stewart (Feb. 27, 1985); J. Williams (March 17, 1986) and J. Williams (March 21, 1986). While no Board regulation specifically applies to the release of customer lists by a Federal stock association, other than 12 CFR 552.11(d) prohibiting release of depositor lists to stockholders, the Office of General Counsel has by interpretive opinion applied to Federal stock associations the same limitations concerning release of customer lists as are applied to Federal mutual associations. *Id.*

B. Description of the Proposed Rule

On January 29, 1989, the Board proposed for public comment a revision of the regulation governing the release of membership lists by Federal associations, giving much consideration to the competing interests of customer privacy and the business needs and practices of Federal associations. *See* 54 FR 5629 (February 6, 1989) ("proposed rule").

The proposed rule applied to customers, defined as depositors in, borrowers from, or other patrons of both Federal stock associations and Federal

[1] Section 545.131(c) gives members of a Federal mutual association the right to communicate with other members of the association only in the manner prescribed in paragraph (d). Paragraph (d) of § 545.131 establishes procedures for communications between members of a Federal mutual association. Finally, § 545.131(e) defines the term "improper communications" for purposes of paragraph (d) of that section. Section 544.5(b)(6) contained in part 544, concerning the charter and bylaws of Federal mutual associations, provides that communications between members shall be consistent with § 545.131. These sections are not altered by the regulations adopted herein.

mutual associations. It addressed the issue of the release of information about customers but distinguished between two types of such information: "Customer identification," defined as a list of the names and addresses of customers; and "customer records," which also encompassed information about the contents and particulars of their savings or loan accounts or other financial transactions with the association.

The proposed rule can be summarized in the following manner: (a) With certain enumerated exceptions, only a customer of a Federal association, and no other person or entity, had the right to inspect or obtain a customer's own customer records; (b) Unless a customer affirmatively and in writing prohibits release of the customer identification, a Federal association may, in its discretion, voluntarily release customer identification to any person or entity; provided that any release of customer identification shall consist only of a complete list of all customers who have not objected to the release of their customer identification. Under the proposed rule, Federal associations could not, therefore, release a partial or incomplete list of customer identification, such as, for example, a list of only depositors, or borrowers, or customers with account balances over $50,000; and (c) With certain enumerated exceptions, a Federal association would be prohibited from releasing its customer records, other than customer identification, unless the Federal association procured from the customer written authorization for such release. The obligation to inform the customer of his or her right to object to the release of customer identification and to obtain written authorization from the customer to release customer records was specifically imposed upon the Federal association. While the Board specifically requested comment on the methods available to Federal associations to implement this affirmative responsibility, the Board proposed the following procedure:

As to the release of customer identification, the proposed rule required that associations, in a timely manner, must notify customers of the association's intent to release customer identification. In this context, the Board described "timely" as allowing a customer sufficient time to receive the notice, review it, consider the alternatives, and decide whether to object to the disclosure of his or her customer identification. Federal associations desiring to release customer identification would be required to provide the notice to new customers at the time an account is opened, before a loan is made, or other financial transaction is entered into. The proposal required that written notice containing the opportunity to object to the release of customer identification must be provided to existing customers along with a self-addressed envelope needing no postage in which the customer could return his or her objection to the Federal association. Federal associations would then be authorized to release customer identification no sooner than thirty (30) days after providing existing customers with such notice and opportunity to object to the release of customer identification. If notice was mailed, the thirty days would begin from the date of mailing. In any event, Federal associations would not be authorized to release customer identification for those customers that objected in writing to the release.

As to customer records, the Board proposed to require an association to procure a customer's informed consent before customer records could be released. No release of customer records would be permitted unless a customer whose records were intended to be released was provided notice that release was contemplated, that the customer need not approve the release and that without the customer's express written authorization for release, the association would not disclose customer records, except in certain enumerated circumstances. Furthermore, the association must receive and retain a copy of the customer's authorization for its records. In this way, the proposal would permit associations to sell or make publicly available their customer records, and third parties would be able to conduct direct mail solicitations aimed at customers of a Federal association in a manner that respects the privacy of its customers.

Accordingly, the Board proposed that associations could use a standardized printed notice and authorization form to solicit the consent to release customer records before such records would be released. This document would be separate from any and all other documents that are provided to customers pursuant to law or regulation.

The Board's proposed rule would have required associations desiring to release customer records to provide such document to the customer at the time an account is opened, before the customer becomes obligated for a loan, or at the time the customer enters into another form of transaction with the association. Federal associations that currently release customer records or that desire to release customer records pertaining to existing customers would be required to provide the notice to each existing customer and to receive that customer's authorization before that customer's records could be released. While the Board noted that there may be various methods available to accomplish this requirement, it believed that a mailing to all customers, including a self-addressed envelope needing no postage, would be the most expedient method. Such a document, for example, may be provided to the customer with the customer's monthly account statement. The Board specifically sought comment on the cost of compliance with this requirement by Federal associations, on the effect such costs would have on the ability of Federal associations to disclose customer identification or records for business purposes or for a fee, and on the comparative effects such costs would have on large and small associations.

In proposing these requirements, the Board stated that circumstances may change in regard to the release of customer records, both from the perspective of the Federal association and of the customer. Therefore, the Board proposed that at least every two years after the initial provision of the notice to customers, Federal associations desiring to release customer identification and records shall mail to each customer new consent forms for the purpose of giving customers the opportunity to object to the release of customer identification and of obtaining reauthorization for the release of customer records. If reauthorization from the customer for release of customer records was not received, the Federal association could no longer continue to release such customer records. Of course, associations could provide such notice more frequently than every two years.

The proposed rule also reflected the Board's belief that customers must be informed not only of the consequences of their decision to consent to the release of customer records, but also of the intended use of such records. The proposal noted that there were several methods available to achieve this requirement, such as requiring the disclosure of the names of the intended recipients of customer records, or requiring a general disclosure that the Federal association intends to release customer records to third parties. The Board proposed that an appropriate balance between these two alternatives is that Federal associations should specify in the notice document the type

or nature of business(es) that may receive customer records from the Federal association, e g., insurance companies, credit card companies, department stores, or marketing agencies.

The Board stated that it was aware that alternatives to these approaches exist. For example, associations could be required to procure a customer's informed consent to the release of customer records each time the association intends to release such records and could be required to identify the intended recipient, the purpose of the release, and the date the records would be released. The Board specifically requested comment on this approach. The Board also sought comment on whether the notice should be provided to each customer each time they enter into a transaction with the association (*e.g.*, each time the customer opens a deposit account or takes out a loan) or whether one notice would be sufficient to cover all records of the customer during the stated time period.

The proposed rule also set out various exceptions to the general non-disclosure rule. In addition to disclosure to the customer or to those authorized by the customer, disclosure would be permitted to those employees or agents of Federal associations responsible for preparing or handling customer records; officials, employees, or agents of the Board, the Federal Savings and Loan Insurance Corporation, or a Federal Home Loan Bank in the exercise of their official duties; other financial institutions or consumer credit reporting agencies as part of a regular exchange of credit information; federal government agencies or entities requiring such information, reports, or returns pursuant to law; those parties who must be informed concerning the dishonor of a negotiable instrument; appropriate law enforcement authorities when an association reasonably believes it has been the victim of a crime; persons making demand pursuant to a lawful subpoena; and the association's bond or insurance company relative to a claim under the association's liability policy.

The proposed rule also provided that release of customer records to any person not enumerated in the rule was permissible only after the association received the prior written approval of the Board. The Board believed that this exception should only apply in unusual and highly exceptional circumstances in which the ability to release customer lists was not contemplated by any other exception to the non-disclosure rule. The Board specifically asked for comment on the need to include this exception and, if included, on whether it should apply to the release of customer identification and records, where the customer has acted to prohibit release, or whether it should only apply to the release of customer records where the customer, while not objecting to the release, had not affirmatively authorized release.

Because the continued confidentiality of customer records following release to the aforementioned excepted parties cannot always be assured, the proposed rule provided that the following parties must execute confidentiality agreements prior to the release of customer records: (1) Parties to whom a customer has authorized such release; (2) officers, employees or agents of the Federal association responsible for preparing and handling customer records; (3) other financial institutions or credit reporting agencies; and (4) the association's bond or insurance companies. These confidentiality agreements would have to contain a statement of the specific use to be made of the records and prohibit disclosure by the third party except as required by law or in accordance with the exceptions set out in paragraphs (e)(3), (e)(5), (e)(7)–(8) of the proposed rule as if these paragraphs applied directly to the recipient of the records.

Additionally, the Board requested comments with respect to whether an exception to the nondisclosure rule should exist for the disclosure of customer records when state law, not otherwise preempted by Federal law or regulations, requires such disclosure to state governmental authorities in the lawful exercise of such governmental authority over the customer or other third party.

Finally, in order to avoid conflict with or repetition of current regulatory provisions dealing with the confidentiality and release of customer records, the Board proposed to delete such conflicting or repetitive provisions. Specifically, the proposed rule would delete paragraphs (a) and (b) of § 545.131 dealing with the disclosure of membership lists by a Federal mutual association and the right of inspection of a member's own records. It proposed to delete paragraph (d) of § 552.11, which contains a prohibition against release to stockholders of Federal stock associations of confidential depositor information. It also proposed to amend paragraph (d) of § 545.141 to reflect the adoption of the disclosure procedures and limitations of § 545.132.

C. Discussion of the Comments

Comments on the proposed rule were solicited during the 60-day period that expired on April 7, 1989. Numerous comments were received by the Board after that date. These comments were accepted and reviewed and are included in this discussion of the comments.

A total of 156 comments were received by the Board in response to the proposal. One hundred eleven were submitted by Federal associations; and 2 were submitted by state-chartered thrift institutions. Of the remainder, 26 were submitted by insurance companies, most of which were wholly-owned subsidiaries of Federal associations, 8 were submitted by savings and loan trade associations, 6 were submitted by law firms, 2 were submitted by data processing companies, and 1 comment was received from a consumer credit reporting agency. No consumers or consumer groups commented.

By the number of 155 to 1, the commenters were overwhelmingly and vigorously opposed to the proposal, with almost all of the commenters citing the enormous costs necessary to comply with the proposal's notification requirements. The commenters generally claimed that the proposal would, if adopted, effectively foreclose the continued marketing of financial services and products by the associations or their service corporations, further eroding industry efforts to decrease operating costs and increase profits. Many commenters argued that the financial, administrative and operating costs of compliance would be so onerous that service corporations would have to be closed or their operations severely curtailed. The lone favorable comment only addressed the Board's decision to impose upon Federal associations a uniform Federal standard governing the release of customer lists. The major points raised by the commenters are summarized below.

I. Economic Burden To Comply With the Proposed Rule

A. Discussion of Comments

1. Industry Practice

Almost every commenter emphasized that it is a necessary, common, effective, and accepted practice throughout the retail financial services industry to use customer lists as a source of prospects for additional products and services developed by financial institutions and their service corporations. The commenters stated that customer records constitute a valuable corporate asset, but that compliance with the proposed notification procedure to obtain approval for the release of customer records would be an

administrative and financial burden that would exceed any benefits the Federal association would receive from compliance. Commenters uniformly noted that the cost of printing the notices and envelopes, mailing the required notices, the recordkeeping resources needed to monitor and update the customer lists, and the costs required to integrate and develop computer data would be exorbitant and would exceed the revenues that could be generated from the proposed rule's limited use of customer records. Moreover, the commenters argued that the rate of response from mailing requests is rarely greater than 3 percent. They concluded that such a low rate of response would not justify the cost of providing the notification and, additionally, would not justify the introduction by service corporations of new products or services developed for existing customers of the Federal association.[2]

2. Release of Customer Lists to Wholly-Owned Service Corporations

Many commenters specifically expressed alarm at the proposed rule's imposition of administrative and financial costs on Federal associations that desire to disclose customer lists to their wholly-owned service corporations. One hundred twenty-two commenters argued against the Board's proposal to require that, as a condition of releasing customer records to wholly-owned service corporations, the association must comply with a costly and time-consuming notification and consent requirement.

Moreover, ninety-one commenters stated that to protect Federal associations from the risk of engaging in certain business activities, many activities are required to be conducted and services provided through service corporations, rather than directly by the associations. These commenters felt it unfair that the board, having required associations to conduct activities through service corporations, would then prevent service corporations from having access to marketing information that the association itself could use were it able to directly offer the product or service. To compete effectively and profitably with third-party providers of various financial services or products, wholly-owned service corporations must take advantage of information available within their corporate family, commenters argued.

Additionally, one hundred three commenters argued that the sharing of information with wholly-owned service corporations does not breach the reasonable privacy expectations of depositors or borrowers. They stressed that, in fact, the opposite is the case—depositors and borrowers expect and trust that the association will provide them with information concerning available new services and innovative products appropriate to their financial needs.

3. Release of Public Record Information

One hundred twenty-two commenters argued that most of the information that is classified in the proposed rule as "customer records" and that is essential to the marketing efforts of Federal associations is information recorded in the public records of the county or other locality. It is illogical, they argued, to restrict or limit the disclosure of this type of information to any recipient based upon a privacy rationale, when every borrower should understand that his or her mortgage, deed of trust, financing statement, or other secured loan document will be recorded in the public records of a particular jurisdiction.

4. 30-day Waiting Period

The proposed rule also contained a 30-day waiting period after an association provides a customer with the required notice and opportunity to object to the release of customer identification before the association can release the customer list. One hundred three commenters complained that the 30-day waiting period would hamper an association's efforts to provide new customers with essential services, such as hazard and life insurance, for example. These commenters claimed that such a delay would result in damaged customer relations and, for example, present real concerns regarding the possibility that the Federal association, as mortgagee or lienholder, will be left uninsured, since a delay in soliciting and contracting for insurance that protects the association from financial loss is directly affected. Additionally, commenters claimed that the sooner the association can solicit the customer, the more likely the customer will purchase the product from the association's subsidiary rather than from a competitor of the association. The commenters argued that the 30-day delay greatly limits the business competitiveness of the association and its service corporations, since no other Federal banking regulatory agency imposes a similar requirement.

5. Database Marketing

One hundred thirty-seven commenters noted that under the proposed rule, only a complete list of all customers' customer identification can be released, even though only a fraction of the customers on the list may be interested in, or even eligible for, the service or product being offered. These commenters argued that the proposed rule would effectively prevent Federal associations from continuing to engage in database, or target, marketing of their products and services.

Ninety-seven commenters argued, for example, that the entire customer base of a Federal association would have to receive solicitations from the association's mortgage insurance subsidiary, when only those customers with existing mortgages might be eligible for the coverage. The same logic would apply to, among other examples, offers of catastrophic health care insurance for the elderly and credit-card accounts for depositors that have a minimum average deposit balance. Commenters questioned why an association must suffer the expense of providing its entire customer base with notice of available products and services when only a distinct portion of the association's customers would reasonably be interested.

To adopt the rule as proposed, they argued, would force Federal associations to suffer severe economic loss as a result of the inability to efficiently market their service corporation's products or services. These commenters believed that associations should be permitted to continue to release pre-selected lists of customers for target marketing of financial services and products.

B. Response to Comments

Upon reflection, the Board now believes that the cost of compliance with the proposed rule could impair the financial condition of Federal associations at a time when capital preservation should be encouraged. For this reason, the Board has revised its proposal, as hereafter described, with regard to the type of information to be released and the notification requirements in a manner that it believes strikes a more reasonable balance between the privacy concerns of the customers and the business needs of Federal associations.

The Board agrees with those commenters who argued that the sharing of information with a Federal

[2] We emphasize that neither the rule as proposed or this final rule would impact a Federal association's ability to market its own financial services and products through third party agents or direct mail specialists. Special exceptions contained in the rule permit associations to continue to use such persons to assist in the marketing of the association's own services and products.

association's wholly-owned service corporations does not breach the privacy expectations of depositors or borrowers and that the requirement in the proposal regarding release of information by Federal associations to their wholly-owned service corporations was unnecessarily burdensome. It is reasonable to assume that depositors and borrowers, who have voluntarily established a business relationship with the association, expect that the association will provide them with information concerning new services and innovative products appropriate to their banking needs. For these reasons, the Board has decided to permit the release of any customer information to wholly-owned service corporations of a Federal association, provided that the customers of the association have been provided with written notice of their right to object to the release of their customer information, and are given a reasonable time to notify the association of their objection.

The Board also agrees with those commenters who urged that any restriction on the release of information that is contained in the public records, and that is based upon a privacy rationale, is unnecessarily burdensome. As to the disclosure to third parties of non-public customer information or information constructed from non-public customer information, the Board adopts the notification requirement applied in the proposed rule to the release of customer records, with one change. A Federal association may disclose non-public customer information to third parties provided that the association notifies the customer of its intent to disclose such information, provides the customer with a printed form explaining the customer's right to object to the disclosure, and provides the customer a reasonable time to object to the disclosure. Unlike the proposed rule, the final rule does not contain the requirement that the association provide the customer with a self-addressed envelope needing no postage in which to return the objection.

The Board has revised the proposed rule to authorize a Federal association to release customer identification and public customer information to third persons other than wholly-owned service corporations of the association, provided that the association has provided notice to the customer of the intent to release public customer identification or public customer information, and has provided the customer with a reasonable opportunity to object to the release. We make special note that the notification requirement established for the release of customer identification and public customer information to third persons is the same as the requirement established for the release of any customer information to a wholly-owned service corporation of a Federal association.

With regard to the 30-day waiting period, the Board has decided to retain a waiting period to provide the customer with a reasonable opportunity to object to the release of customer information. The Board is, however, shortening the waiting period to fifteen days, but is convinced that this time period affords the customer a reasonable opportunity to notify the association of any objection to the release of customer information. The Board believes that this rule will not hamper a subsidiary's efforts to offer various insurance or other products and services to the association's customers and will not cause the association to suffer economic harm.

With regard to the comments concerning database or target marketing, the Board believes that the changes to the proposed regulation discussed above address most of the concerns raised by the commenters. As discussed, Federal associations will be able to release all customer information to wholly-owned service corporations, absent objection by the customer. Consequently, lists of selected customers can be provided to a wholly-owned service corporation based on any distinctions the service corporation deems appropriate.

Similarly, Federal associations will be permitted to release customer identification and public customer information to third parties, absent objection by the customer. Thus, lists of selected customers can be provided to third parties based on any distinction contained in the public records. The only limitation would be that lists made available to third parties other than wholly-owned service corporations cannot be based on non-public information unless the customer has consented to the disclosure of the non-public information on which the list is based.

II. Exceptions to the Rule

a. Agents, Independent Contractors, and Providers of Professional Services

Eighty-one commenters urged the Board to clarify its treatment of the disclosure of customer information to third persons who perform functions that permit Federal associations to perform their day-to-day operations. Commenters argued that associations must continue to be permitted to contract with specialized entities to provide marketing services and related operational expertise that would be cost-prohibitive to develop in-house. This is particularly imperative, many indicated, for smaller associations that cannot perform such printing, data processing, and other related marketing operations in-house. Furthermore, many commenters argued that the proposed rule was ambiguous as to the release of customer information to third persons that provide professional services to the association, such as attorneys and accountants.

The Board has given much consideration and attention to the competing interests of customer privacy and the business needs of Federal associations raised by the comments to the proposed rule. In the proposed rule, the Board provided an exception for agents of an association. The Board did not, however, recognize that many associations use independent contractors for similar tasks. The Board now understands that a Federal association cannot conduct its day-to-day business operations without freely releasing certain customer records to agents or third party independent contractors, such as those that print checks and process customer mailings, or to data processing and other entities that provide services pursuant to a contractual agreement. Most frequently, third party vendors or service providers are hired to perform such services. With observance of methods to safeguard customer confidentiality, as discussed below, the Board believes that customer information must be released to such third parties. Accordingly, the Board has provided an exception to the notification requirement authorizing Federal associations to disclose customer information to agents, independent contractors, and professional service providers that provide services to the Federal association in the ordinary course of the association's business.

b. Credit-Related Information

Fifty-nine commenters urged that the exception permitting release of "credit related" customer records to financial institutions, commercial enterprises, and credit reporting agencies should be expanded to include "deposit related" information as well. Commenters noted that deposit related information is frequently provided to report involuntarily closed checking accounts due to overdrafts, confirmations as to account balances when the customer writes large checks, on credit cards and other credit products, and in similar circumstances.

The Board believes that the exception in the proposed rule permitting the release of "credit related" customer information to commercial enterprises, credit reporting agencies, and financial institutions in the general and ordinary course of business is intended to cover most of the situations described by these commenters. The Board has clarified the regulatory language to make it clear that any information relevant to the credit standing of the customer can be disclosed under this exception. In the event that a merchant or other third person desires to confirm a customer's account balance for the purpose of accepting a check, the Board believes that the merchant can require as a condition of accepting the check that a customer expressly authorize the association to disclose the customer's customer information to the merchant. Such authorization can be requested and obtained on a case-by-case basis. For this reason, we believe an exception for the release of "deposit-related" information is not warranted.

c. Secondary Market Transactions

Twenty-nine commenters were concerned that the proposed rule would interfere with an association's secondary market transactions. These commenters argued that the proposal failed to consider the need by potential buyers of loans, portfolios, and mortgage servicing rights to inspect the loan files prior to consummating a purchase. The inability to sell a portfolio consisting of loans with specific payment characteristics may, according to several commenters, have the unintended consequence of paralyzing an association's asset/liability, or interest rate risk, management, since the sale of loans is used as a method of managing that risk.

The Board agrees that an exception to the disclosure limitations is appropriate in this case to ensure that the restrictions on the disclosure of customer information do not interfere with secondary market transactions by Federal associations. Accordingly, the final rule includes an exception for the release of customer information in the ordinary course of undertaking a secondary market transaction in loans, portfolios, mortgage servicing rights, and related secondary market transactions.

III. Other Comments

a. Purpose of the Rule

A substantial number of commenters contended that the Board, prior to the publication of the proposed rule, never intimated to the industry that the release of customer information was a problem demanding regulatory revision. One hundred twenty-eight commenters questioned the motivation behind the Board's proposal to restrict the use of customer lists, stating that the Board presented no evidence in the proposed rule that the release of such lists by Federal associations was in any manner being abused. The comments noted that financial institutions already take great care to avoid unauthorized disclosure of customer information and recognize that, being a valuable corporate asset, the release of customer lists is always preceded by requiring the recipient of customer lists to enter into a confidentiality agreement with the association. The use of the confidentiality agreement, they noted, has been uniformly required by Supervisory Agents pursuant to the authority in § 545.131 that Supervisory Agents "may specify terms and conditions of approval" of the release of membership lists. *See* 12 CFR 545.131(a)(3) (1988).

Additionally, commenters claimed that the proposed rule is incompatible with recent statutory declarations and the Board's own regulatory pronouncements. Forty-four commenters criticized the proposal as inconsistent and violative of the spirit and substance of the Competitive Equality Banking Act of 1987 ("CEBA") (Pub. L. No. 100–86, 101 Stat. 552) and regulations promulgated by the Board thereunder. Noting that while the thrust of CEBA was to bring thrifts closer to the regulatory standards and practices governing Federal banking agencies, the commenters argued that the proposed rule puts Federal associations on an "unequal playing field" as a result of the restrictions placed on the ability of service corporations to market products and services to their parent's customers. Furthermore, a significant number of commenters argued that the proposed rule clashes with the legislation known as the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") that is intended to restructure the thrift industry. These commenters stated that the Administration's plan, as well as that of the Congress, is to impose upon thrifts "a level playing field" with the standards of the Federal banking regulators. These commenters concluded that since the proposed rule would give banks and other financial service companies an advantage over associations, it is inconsistent with the spirit of FIRREA.

The Board notes that the disclosure of customer information has been regulated by the Board for many years. This amendment of the long-standing regulatory section governing the disclosure of membership lists is not a new or sudden concern of the Board. Rather, the Board's consideration of the matter and the reasons for the regulatory revision date back to the Board's proposed changes to the Board's regulations regarding corporate governance of Federal associations. *See* 50 FR 52482 (December 24, 1985) and 52 FR 25870 (July 9, 1987). Moreover, as described in the proposed rule, the current regulatory scheme requiring approval of release of customer identification and information by supervisory authorities has resulted in inconsistent pronouncements by the regional Federal Home Loan Banks concerning the requirements and procedures for the release of customer information. As a result, the need for the adoption of a uniform Federal standard for the treatment of customer information is advisable and reflects the Board's understanding that customer information has become a valuable corporate asset.

The final rule also expands the ability of Federal associations to disclose customer information without seeking prior approval. As adopted by the Board, the rule authorizes Federal associations to release any customer information to their wholly-owned service corporations and public record customer information to other third persons, subject to compliance with a simple notification requirement. Release of non-public customer information to third persons also is authorized, subject to compliance with a more comprehensive notification requirement. Moreover, a list of thirteen exceptions to the notification requirement is adopted whereby disclosure is permitted with no notification requirement or prior approval by the Board.

b. Examination of Customer's Own Records

Various commenters also suggested that the right to obtain a customer's own records be distinguished from an association's right to release such records voluntarily and also expressed concern about the scope of information that a customer could review. The Board is of the view that the right to obtain and inspect customer information belongs only to a customer, and not to third parties. The Board has determined to retain in this final rule the principle that the prerogative to obtain and inspect a customer's own confidential records resides with the customer. The decision to release customer records over the objection of customers or

without their consent is left to the Federal associations under specific circumstances. The Board, however, concludes that the customer's right does not extend to the association's own confidential business records, to communications or correspondence between the association and its attorneys or accountants, or to memoranda or other records of the board of directors of the Federal association that may relate to the customer.

D. The Final Rule

After carefully reviewing the comments received, and after thorough consideration of the costs and burdens that would be imposed on Federal associations, the Board has determined to adopt the proposed rule with several significant modifications as discussed below.

Until now, the Board's rules concerning the confidentiality and disclosure of customer records have been separately applicable to Federal stock associations and Federal mutual associations. As stated in the proposed rule, the Board has made the determination that it is more efficacious for these rules to appear in one regulatory section, applicable to all Federal associations. This determination accords with the OGC opinions, previously mentioned, that, with regard to the release of customer information, the interests of Federal mutual associations and Federal stock associations are similar as are the interests of depositors in stock associations and members of mutual associations.

In publishing the proposed regulation, the Board proposed that the exclusive standard for release of customer information should be the nature of the information intended to be released. This was the reasoning for the distinction between, and the different procedures for the release of, customer identification and customer records. The final rule does not contain this distinction. Rather, the final rule focuses on the relationship of the Federal association to the recipient of the customer information and, with regard to release to third persons other than wholly-owned service corporations whether the customer information intended to be released is in public records. In place of the terms used in the proposed rule, the final rule establishes the categories of "customer identification," defined to mean a customer's name and address, and "customer information," defined to mean a customer's name, address, telephone number, savings or loan account records, and any information constructed from those records relating to the customer's relationship with the association. In general, customer identification is only relevant when the disclosure is to a third person other than a wholly-owned service corporation. Disclosure of non-public record customer information to third persons requires the association to procure the affirmative consent of the customer.

In balancing the business concerns of the association with the privacy concerns of the customers, the Board is adopting the following compromise: a Federal association may release "customer information" in the following manner:

(a) Only a customer of a Federal association, and no other person or entity, has the right to inspect and obtain a customer's own customer information; (b) Unless a customer affirmatively and in writing prohibits the release of customer information, a Federal association may, in its discretion, voluntarily release customer information to (i) wholly-owned service corporations; and (ii) any other persons or entities if the customer information intended to be released consists only of customer identification and/or is recorded in, or could be constructed from, public records; (c) Federal association's may release to third persons, other than the association's wholly-owned service corporations, customer information that is *not* contained in public records, provided that the association procures the consent of the customer after providing the customer with notice of its intent to release the customer's customer information and the right of the customer to prevent such release, and supplying a plainly worded form that the customer may use to provide such consent; and (d) in certain situations set forth in the regulation the association may release customer information regardless of consent or objection by the customer.

Each association must notify customers in a timely manner of its intent to release customer information. In this context, the Board views "timely" as allowing a customer sufficient time to receive the notice, review it, consider the alternatives, and decide whether to object to the disclosure of his or her customer information. Federal associations desiring to release customer information may provide the notice to new customers at the time an account is opened, at the time a loan application is submitted, or other transaction is entered into, and are authorized to release customer information no sooner than fifteen (15) days thereafter. Written notice must be provided to existing customers in a timely and conspicuous manner, although a separate mailing or document is not required. A Federal association may, for example, include with or in a monthly account statement, periodic statement, or other mailing a short but conspicuous statement that (a) the association intends to release customer information, (b) that any customer that objects must provide written notice of objection to the association, and (c) the address to which a customer may write to register the customer's objection. Federal associations may release customer information pertaining to existing customers no sooner than fifteen (15) days after providing existing customers with such notice and opportunity to object to the release of customer information. If notice is mailed, the fifteen days would begin from the date of mailing. In any event, Federal associations may not release customer information for those customers that have provided written objection to such release unless otherwise permitted by the regulation. The Board notes that this procedure is a substantial deviation from the notification procedure described in the proposed rule that required the association to obtain the affirmative consent of the customer prior to releasing the customer's customer records. The final rule maintains the Board's intent to provide a mechanism for customers to ensure their privacy by informing associations of their objections to the release of customer information. The Board believes that this revised procedure is much less burdensome and costly than the proposed procedure and respects the business interests of Federal associations as well as customers' privacy expectations.

As to the responsibility of Federal associations to obtain a customer's authorization for the intended release of non-public customer information to a third person other than a wholly-owned service corporation, the Board is adopting certain procedures requiring an association to procure a customer's informed consent before customer information is released. No release to a third person of non-public customer information is permitted unless a customer whose records the association intends to release is given a printed form stating that release is contemplated, that the customer may object to the release, and that without the customer's express written authorization for release the association

will not disclose customer information, except in certain limited circumstances. Furthermore, the association must receive and retain a copy of the customer's authorization for its records. In this way, associations may sell or make publicly available non-public customer information, and third parties can conduct direct mail solicitations aimed at customers of Federal associations in a manner that respects the privacy expectations of customers of Federal associations. This procedure implements the suggestion of a great many commenters that release of non-public customer information to third persons may be treated differently than when customer information is shared with a member of the same corporate family.

More specifically, the Board adopts the notification procedure described in the proposed rule that was applicable to the release of customer records and suggests that associations use a standardized notice and authorization form to solicit the consent to release non-public record customer information to third persons before such information is released. This document would be separate from any and all other documents that are provided to customers pursuant to law or regulation. Such a document would contain, for example, the following:

1. The definition of customer information;

2. A statement that the customer has the right, with certain exceptions, to withhold consent to the release of his or her non-public customer information by the Federal association along with a summary of those exceptions;

3. A description of the types of businesses, organizations, or other persons or entities to whom non-public customer information may be disclosed and the time period, not to exceed two years, in which such disclosures may be made;

4. A statement that if the Federal association intends to release non-public customer information after the expiration of the two year period, or if release is contemplated to types of recipients other than those for which authorization is sought, the association shall notify the customer of the customer's prior consent to release such information, and remind the customer of the customer's continuing right to object to the release at any time.

5. A statement that the customer may at any time provide the Federal association with written notice withdrawing the customer's prior consent to release non-public customer information and how and to whom such notice must be given;

6. A statement authorizing the release of non-public record customer information; and

7. A space for the customer's signature and for the date the document was executed.

The final rule permits associations desiring to release non-public record customer information to third persons to provide this document to the customer at the time an account is opened, at the time a loan application is made, or at the time the customer enters into another form of financial transaction with the association. While the Board notes that there may be various methods available to accomplish this requirement, such a document, for example, may be provided to the customer with the customer's monthly account statement.

The Board believes that the notification requirements established in this final rule apply to each customer, rather than to each transaction by a customer with the association (*e.g.*, one notice regardless of how many deposit accounts or loan accounts a customer has with a particular association). Of course, in its discretion, an association may tailor its notice to what it intends to release. For instance, an association only seeking to release non-public loan information to third parties would not be required to seek authorization to release deposit information, or an association seeking only to release names and addresses to its wholly-owned service corporations could limit its notice to those facts.

The Board also believes that to assure the confidentiality of disclosed customer information, the intended recipient of the customer information and the association should enter into a written confidentiality agreement containing a statement of the specific use to be made of the information, and prohibiting disclosure of the information by the recipient except as required by law or pursuant to the exceptions set out in the final rule.

In adopting these notification requirements, the Board recognizes that circumstances may change in regard to the release of customer information, both from the perspective of the Federal association and of the customer. Therefore, the Board is requiring that at least every two years after the initial provision of notice to customers, Federal associations desiring to continue to release either customer information to wholly-owned service corporations or public customer information and customer identification to third persons must provide written notice to such customers explicitly reminding each customer of the customer's nonobjection or prior consent to release customer information and of the customer's continuing right to prohibit such release at any time. The notice must contain an address where the customer may register such withdrawal of consent. If the customer prohibits such release, the Federal association shall no longer continue to release customer information except when otherwise authorized by law or regulation. Associations may provide such notice more frequently than every two years.

As to the release of non-public customer information to third persons, the two year renewal notification procedure has been revised from the proposed rule. Rather than require the association to affirmatively procure the customer's express authorization again, the final rule simply requires associations to remind the customer that he or she has previously authorized the release of non-public customer information to third persons, and remind the customer that he or she may withdraw such consent at any time. Federal associations may comply with this requirement, for example, by providing the customer with a preprinted and self-addressed form with which the customer may withdraw the authorization. The Board provides in § 545.132(f)(5) of the final rule an example of a renewal notice that would be considered to be in compliance with this requirement. Associations may, however, develop their own renewal notices for the release of non-public customer information to third persons provided that the equivalent information is contained in the notice.

The final rule sets out the exceptions to the general disclosure rules described above and as described in the proposed rule, with three new exceptions hereafter described. In instances covered by the exceptions, associations could release customer information without complying with the notice requirements set out by this regulation. In addition to disclosure to the customer or to persons or entities authorized by the customer, disclosure would be permitted to those directors, officers, and employees of Federal associations responsible for preparing or handling customer records in the ordinary course of the association's business; and to agents of the Federal association, that, pursuant to an agency agreement, perform activities or transactions for the benefit of the association. The Board notes that whether an agency relationship exists will be defined under applicable state law. Additionally, disclosure is permitted to officials, employees or agents of the Board, the

Federal Savings and Loan Insurance Corporation, a Federal Home Loan Bank, or the Federal Deposit Insurance Corporation in the exercise of their official duties; other financial institutions or consumer credit reporting agencies as defined by the Fair Credit Reporting Act (15 U.S.C. 1681 et seq. (1980 & Supp. VIII 1988)) as part of a regular exchange of information relevant to the credit-worthiness of the customer in the ordinary course of the association's business; federal government agencies or entities requiring such information, reports, or returns pursuant to law; those parties who must be informed concerning the dishonor of a negotiable instrument; appropriate law enforcement authorities when an association reasonably believes it has been the victim of a crime; persons making demand pursuant to a lawful subpoena; the association's bond or insurance company relative to a claim under the association's liability policy; and when required to complete a secondary market transaction.

The final rule also provides that release of customer information to any person not expressly enumerated in this section is permissible only after the association receives the prior written approval of the Board. The Board believes that this exception should only apply in unusual and highly exceptional circumstances.

Many commenters also suggested that an exception is needed for release of customer information to third party vendors of services to the association, such as those providers of data processing services, printing services, and other services ordinarily provided by independent contractors, as well as professional service providers such as attorneys and accountants. The Board agrees and has added an exception for persons who provide services to the association in the ordinary course of the association's business.

Commenters also urged that an exception be created to cover the review of loan files and records for secondary market transactions. As a result, an exception has been added to assist those persons undertaking a secondary market transaction in loans, portfolios, or mortgage servicing rights.

Further, the Board is adding an exception for the release of customer information in connection with civil investigations and proceedings, including forfeitures, conducted by the United States Department of Justice. This exception would, among other things, apply in connection with the exercise of civil authorities granted to the Department of Justice including the assessment of civil money penalties for violations of 18 U.S.C. 657 and 1014 in accordance with amendments currently being considered to such sections.

Because of the need for continued confidentiality of customer information following release to the aforementioned excepted parties, the final rule provides, as did the proposed rule, that certain parties must execute written confidentiality agreements prior to the release of customer information: parties to whom a customer has authorized such release; agents and contractors of a Federal association responsible for preparing, handling, or processing customer information; other financial institutions or credit reporting agencies; the association's bond or insurance companies, and persons engaged in secondary market transactions. These confidentiality agreements must contain a statement of the specific use to be made of the records and prohibit disclosure by the third party except as required by law or in accordance with the exceptions set out in paragraphs (e)(5), (e)(7), (e)(9)–(10) of the regulation as if these sections applied directly to the recipient of the customer information.

The Board has decided, as originally proposed, to preempt state law concerning the release of customer information by Federal associations.[3] The Board has extensively reviewed state law concerning these related issues and has concluded that it varies widely. Moreover, state laws do not, for the most part, address the Board's concern about the need to balance customer privacy against the business requirements of Federal associations. Consequently, pursuant to its authority to regulate the operations of Federal associations, the Board is adopting the following regulations to preempt state law and exclusively govern the operations of Federal associations in this regard. *See* 12 U.S.C. 1464(a) (1980 and Supp. VIII 1988); 12 CFR 545.1 (1988); *see, —e.g., Fidelity Fed. Sav. and Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 164 (1983).

The Board is also amending section § 545.131 to reflect the creation of new § 545.132 governing the release of customer information. Section 545.131 continues to govern the right of a member of a Federal mutual association to communicate with other members, and establishes the procedures for conducting such communication.

Finally, the Board is amending § 545.141 pertaining to remote service units. That section authorizes a Federal association to disclose account data to various entities that operate, share, or participate in remote service units. The final rule amends § 545.141(d) to permit a Federal association to release remote service unit account data to persons other than the Board in accordance with new § 545.132.

The effective date of this regulation is 120 days after its publication in the **Federal Register**. The Board believes that this delay provides Federal associations with a reasonable time to develop procedures and materials necessary for compliance with the final rule.

Final Regulatory Flexibility Analysis:

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604 (1982), the Board is providing the following final regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the final rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** section.

2. *Small entities to which the final rule would apply.* The final rule would apply to all Federal associations without regard to size.

3. *Impact of the final rule on small entities.* The final rule would clarify the circumstances under which all Federal associations may disclose customer identification and records for business purposes and for a fee.

4. *Overlapping or conflicting federal rules.* As explained in the **SUPPLEMENTARY INFORMATION** section, the final rule is intended to streamline the Board's regulations governing a Federal association's release of its customer records. Other than the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq. (1982 and Supp VI 1988), which is expressly considered in this final rule, there are no other known federal rules that duplicate, overlap, or conflict with this rule.

5. *Alternatives to the final rule.* As alternatives to the final rule, the Board could retain the present requirement of prior Board or supervisory approval contained in § 545.131 for the release of customer records, or the Board could adopt the revisions to §§ 545.131, 543.9–3, and 544.9–2 as proposed in the Corporate Governance proposals.

List of Subjects in CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, and Savings and loan associations.

[3] The Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, provides a federal standard with respect to the release of customer records to federal governmental authorities.

Accordingly, the Federal Home Loan Bank Board hereby amends part 545, subchapter C, chapter V, title 12 Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows.

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 545.131 by removing paragraphs (a) and (b); by redesignating existing paragraphs (c), (d) and (e) as the new paragraphs (a), (b) and (c); and by revising the newly redesignated paragraphs (a) and (b)(5)(ii) to read as follows:

§ 545.131 Communications between members of a Federal mutual association.

(a) *Right of communication with other members.* A member of a Federal mutual association has the right to communicate, as prescribed in paragraph (b) of this section, with other members of the association regarding any matter related to the association's affairs, except for "improper" communications, as defined in paragraph (c) of this section. The association may not defeat that right by redeeming a savings member's savings account in the association.

(b) *Member communication procedures.* * * *

(5) * * *

(ii) Notification that the association has determined not to mail the communication because it is "improper" as defined in paragraph (c) of this section;

* * * * *

3. Amend part 545 by adding a new § 545.132 to read as follows:

§ 545.132 Disclosure of customer records.

(a) *Definitions.* For purpose of this section:

(1) The term "Agent" means any person authorized to transact business for a principal, as defined by the laws of the appropriate jurisdiction.

(2) The term "Customer" means a depositor in, borrower from, and any other person patronizing a Federal savings association and utilizing its services.

(3) The term "Customer identification" means the original or any copy or summary of any document, including any evidence of a transaction conducted by electronic terminal, that contains the name and/or address of any customer of a Federal savings association, or any data from which such information could be constructed.

(4) The term "Customer information" means the original or any copy or summary of any document, including any evidence of a transaction conducted by means of an electronic terminal, that contains a customer's customer identification and any information concerning a customer's individual savings or loan accounts or the details of other types of transactions between the customer and the association, or any data from which such information could be constructed.

(5) The term "Financial institution" means any office of a bank, savings bank, savings association, industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any state or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(6) The term "Person" includes, an individual, partnership, corporation, association, trust, or any other legal entity organized under the laws of any state or of the United States, or of any foreign state.

(7) The term "Public record" means a written document that is filed and recorded in the official public records of a governmental unit and which is available for public inspection.

(8) The term "Service corporation" has the meaning provided in 12 CFR 545.74 (1988), and includes its wholly-owned subsidiaries.

(9) The term "Third person" means a person other than the customer, the Federal savings association, or its wholly-owned service corporation, to whom disclosure is restricted by this regulation.

(b) *Right to obtain and inspect customer's own customer information.* A customer of a Federal association or his duly authorized agent has the right to obtain and inspect customer information pertaining solely to the customer's own savings account(s) or loan account(s) records, or information pertaining to other financial transactions with the association. A customer does not have the right under this section to obtain internal business papers, memoranda, or other confidential correspondence or communications between the association and others including its attorneys, accountants, and board of directors that may relate to the customer.

(c) *Disclosure of customer identification and customer information.* (1) A Federal association may disclose a customer's customer information to:

(i) A wholly-owned service corporation of the Federal association, or

(ii) To third persons if the customer information intended to be released is limited to information recorded in the public records and/or a customer's customer identification, provided that in either case the Federal association has given written notice to the customer of the intent of the Federal association to release such information, and that the customer has the right to prohibit the release of this information by notifying the association in writing of his or her objection, or

(iii) To third persons if the customer information to be disclosed is customer information not contained in a public record provided that the Federal association has complied with paragraph (f) of this section.

(2) Any disclosure pursuant to paragraph (c)(1) (i) and (ii) of this section may be made no sooner than fifteen (15) days after the customer received the notice, if the notice was given in person, or fifteen days after the notice was mailed to the customer, and shall be limited to those customers of the Federal association who have not objected to the release of his or her customer information pursuant to those provisions.

(3) At least once every two years after a Federal association releases a customer's customer information pursuant to paragraph (c)(1) of this section, a Federal association that desires to continue to release customer information shall provide written notice to such customers reminding them that the association may release such customer information and of the customer's continuing right to withdraw such authorization at any time.

(d) *Exceptions.* Notwithstanding paragraph (c) of this section, a Federal association may disclose its customer information to the following:

(1) Any person to whom the customer has affirmatively authorized such disclosure in writing;

(2) Any director, officer, or employee of a Federal association having the duty to prepare, examine, handle, maintain, or process customer information in the ordinary course of conducting the association's business;

(3) Any agent of the association, any independent contractor providing a service to the association in the ordinary course of the association's business, or any person providing

professional services to the association, including, but not limited to, an accountant engaged by the association to prepare an independent audit or an attorney performing a service on behalf of the association;

(4) Any officer, employee, or agent of the Board, the Federal Savings and Loan Insurance Corporation, a Federal Home Loan Bank, or the Federal Deposit Insurance Corporation for use solely in the exercise of his or her duties;

(5) A financial institution, commercial enterprise, or credit reporting agency, when such disclosure is part of an exchange in the regular course of business of information pertaining to the credit-worthiness of the customer between a Federal association and another financial institution or commercial enterprise, directly or through a credit reporting agency;

(6) Persons to whom reports or returns must be made or information disclosed pursuant to Federal law or regulations including, but not limited to, the Internal Revenue Service, or any government authority acting pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, or the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.*

(7) Persons to whom information is permitted to be disclosed under state law concerning the dishonor of a negotiable instrument;

(8) An appropriate law enforcement authority when the Federal association reasonably believes, pursuant to § 563.18(d) of this chapter, that it has been the victim of a crime or has a known factual basis for a belief that a crime has been committed;

(9) Persons making demand pursuant to a lawful subpoena, summons, warrant, or court order or in response to a subpoena from a federal or state grand jury served upon the Federal association;

(10) The association's bond or insurance companies when the association has information relative to a claim pursuant to its bond or director's and officer's liability insurance policy or other insurance coverage;

(11) Any person for the purpose of engaging in a secondary market transaction;

(12) Representatives of the United States Department of Justice conducting civil investigations, pursuing civil actions for the purpose of assessing civil money penalties, or pursuing forfeitures for violations of financial institution criminal statutes.

(13) Any person not expressly permitted by this section if the association receives the prior written approval of the Board, which may establish the terms and conditions governing such release.

(e) *Confidentiality agreement.* Prior to the release by a Federal association of its customer information authorized by paragraphs (c)(1) of this section or by exceptions (d)(1), (d)(3), (d)(5), (d)(10)–(11) of this section, the association shall require intended recipients of customer information to execute an agreement stating at a minimum the specific use to be made of the customer information and prohibiting subsequent disclosure of the customer information to a third party, except if such disclosure is required by law or pursuant to the circumstances set forth in paragraphs (d)(4), (d)(6), (d)(8)–(9), and (d)(11) of this section, and, if the recipient of the customer information is a credit reporting agency, subsequent disclosures may be made in the regular course of the credit reporting agency's business.

(f) *Informed consent form and procedure.* (1) Before releasing any customer information pursuant to paragraph (c)(1)(iii) of this section, an institution shall:

(i) Provide a copy of an "Informed Consent Form" to all new and existing customers of the association whose customer information is not contained in the public records intended to be disclosed to third persons. The consent form shall contain:

(A) A definition of customer information not contained in a public record ("non-public customer information");

(B) A statement that the customer has the right to withhold consent to the release of his or her non-public customer information by the Federal association;

(C) A description of the types of businesses, organizations, or other persons or entities to whom non-public customer information may be disclosed and the time period, not to exceed two years, in which such disclosures may be made;

(D) A statement that the Federal association may seek to release non-public customer information for a longer period than two years, and if an extension is sought, the association shall provide a notice explicitly reminding the customer of the customer's prior authorization and the customer's continuing right to withdraw that authorization.

(E) A statement that if release is contemplated to types of recipients other than those for which authorization is sought the association must obtain new authorization for the release;

(F) A statement that the customer may at any time provide the Federal association with written notice withdrawing the customer's prior consent to release non-public customer information and how and to whom such notice must be given;

(G) A statement that non-public customer information may be released pursuant to statute or regulation even when not authorized by the customer;

(H) A statement authorizing the release of non-public customer information; and

(I) A space for the customer's signature and for the date the document was executed.

(ii) Receive a signed and dated consent form from the customer; and

(iii) Retain a copy of each consent form in an appropriate file maintained for the customer providing the authorization.

(2) A Federal association shall fulfill the requirement that it obtain consent from its customers before disclosing customer information not contained in a public record under paragraph (c)(1)(iii) of this section by providing a clear and conspicuous document containing the information set forth in paragraph (f)(1) of this section. The following complies with this requirement, but associations are permitted to develop their own forms containing the required information:

Authorization to Disclose Customer Information

[Customer Name]

[Account/Loan Number(s)]

Under applicable Federal law and regulations [name of institution] must obtain your consent to disclose non-public information concerning your account balances, loans, or other financial activities to various entities. This information that pertains to your financial transactions is known as non-public customer information.

[Name of institution] desires to disclose such information during the next [period of time not to exceed two years] to [insert types of persons or entities to which the customer records are intended to be disclosed]. These persons or entities may contact you to offer you a product or service. These persons or entities have agreed, or will be required to agree, not to disclose this information to any other person or business, except as permitted by law and regulation, and have agreed that non-public customer information shall remain confidential. [Name of institution] may receive a fee for the release of customer records. In the event that the association wishes to disclose such information to persons or entities not described above, the association will seek reauthorization. In the event the association wishes to disclose this information beyond two years, it will provide you with notice.

Without your consent, [Name of institution] cannot disclose your non-public customer information except as provided for by law and regulation.

If you provide your consent to disclose this information now or in the future, you may withdraw your consent at any time. You may withdraw your consent by writing [name of institution] at the following address:

[Name of institution]

[Address of institution]

[Attn:]

If, after reading the following statement, you consent to the release of non-public customer information, sign your name on the space provided and return this form to [name of institution].

AUTHORIZATION

I hereby provide my consent to [name of institution] to release my non-public customer information to third persons, and understand that I may withdraw such consent at any time. I have been informed of my right to withhold my consent for [name of institution] to release my non-public customer information and I have read the information printed above.

Name of customer

Date

(3) Federal associations shall not release any person's non-public customer information and shall take such affirmative steps as may be necessary to insure that such customer information is not released:

(i) If the customer has not authorized the disclosure of such information;

(ii) If at any time, the Federal association receives written notification of a customer's withdrawal of consent to release customer information pursuant this section.

(4) A customer may, at any time, withdraw the consent by writing to the Federal association and informing it of the withdrawal of consent.

(5) For the purpose of compliance with the renewal notice requirement of paragraph (c)(3) of this section for release of non-public customer information to third persons, the following notice will be considered to be in compliance with that section, but associations may develop their own notices provided that the equivalent information is contained therein:

Renewal Notice for Release of Non-Public Information

[Name of customer]

[Account/Loan number(s)]

You previously gave [name of association] your consent to disclose non-public information concerning your account balances, loans, or other financial activities to [types of persons or entities to which the customer information has been disclosed]. This information that pertains to your financial transactions is known as non-public customer information.

[Name of association] is required by law or regulation to inform you at least every two years of your right to withdraw your consent at any time. If you decide to withdraw your consent, your non-public customer information will no longer be disclosed once we receive a written notice withdrawing your consent. You may withdraw your consent by writing to the following address:

[Name of association]

[Address of association]

Attn: [appropriate employee of association]

4. Section 545.141(d) is revised to read as follows:

§ 545.141 Remote Service Units (RSUs).

* * * * *

(d) *Privacy of account data.* A Federal association shall allow accountholders to obtain any information concerning their RSU accounts. Except for generic data or data necessary to identify a transaction, no Federal association may disclose account data to third parties other than the Board or its representatives except in accordance with § 545.132 of this part. Information disclosed to the Board will be kept in a manner to ensure compliance with the Privacy Act, 5 U.S.C. 552a. A Federal association may operate an RSU according to an agreement with a third party or shared computer systems, communications facilities, or services or another financial institution only if such third party or institution agrees to abide by this section as to information concerning RSU accounts in the Federal association.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-19276 Filed 8-16-89; 8:45 am]

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12 CFR Part 563

[No. 89-2327]

RIN 3068-AA 74

Equity-Risk Investments

Dated: August 7, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending 12 CFR 563.9-8, its regulation governing investments by institutions the deposits of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, operating subsidies, certain land loans, and nonresidential construction loans ("equity-risk investments").

Today's final rule eliminates the exclusion from the definition of "equity security" in 12 CFR 563.9-8(b)(2) for stock issued by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased by insured institutions after December 14, 1988. *See* Board Res. No. 89-1318 (Apr. 12, 1989), 54 FR 15426 (Apr. 18, 1989); Board Res. No. 88-1393 (Dec. 22, 1988), 54 FR 155 (Jan. 4, 1989). The final rule grandfathers such investments, however, in a manner consistent with the savings clause of the current equity-risk investment regulation, *see* 12 CFR 563.9-8(f) (1988). Such grandfathering covers both the threshold and diversification requirements of the equity-risk investment rule. *See* 12 CFR 563.9-8(c)(2), (e)(1) (1988). The rule also adds such investments to the list of permissible equity-risk investments.

Legislation currently pending before Congress may, if enacted, affect the ability of certain insured institutions to invest in equity-risk investments. Nevertheless, these anticipated changes do not affect the need for the substantive amendments made by this rule.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Richard M. Schwartz, Attorney, (202) 906-6897; Deborah Dakin, Regulatory Counsel, (202) 906-6445; Karen Solomon, Associate General Counsel, (202) 906-7240, Regulations and Legislation Division, Office of General Counsel; Carol Wambeke, Financial Economist, (202) 906-6758, Financial Analysis Division, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Ben F. Dixon, Policy Analyst, (202) 331-4599, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17 Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board's equity-risk investment regulation establishes thresholds for investments by insured institutions in certain assets, including equity securities. *See* 12 CFR 563.9-8(c)(2). Institutions wishing to invest more heavily in such assets are required to obtain prior supervisory approval. *See* 12 CFR 563.9-8(g)(1). The definitional section of the regulation, 12 CFR 563.9-8(b), sets forth which types of assets are included in, or excluded from, such investments and thus counted toward the thresholds. On December 23, 1988, the Board proposed to remove the

exclusion from the definition of "equity security" in 12 CFR 563.9–8(b)(2) for stock issued by Fannie Mae and Freddie Mac purchased by insured institutions on or after December 14, 1988. 54 FR at 156. All stock purcnased prior to that date would have continued to be excluded in full, i.e., not counted in any way toward an insured institution's equity-risk investment threshold, as set forth at 12 CFR 563.9–8(c)(2). 54 FR at 157.

Moreover, under the proposal, stock issued by those instrumentalities, as well as by other, similar, United States government-sponsored corporations would be expressly authorized as investments for purposes of the equity-risk investment rule, pursuant to 12 CFR 563.9–8(d)(1). *Id.* at 156–57. Such express authorization would allow an insured institution to invest in those securities without having to acquire the approval of its Principal Supervisory Agent ("PSA"), assuming independent authorization to make such an unapproved purchase.

On April 12, 1989, the Board issued a reproposal treating investments in Fannie Mae and Freddie Mac stock in a manner consistent with the savings clause of the current equity-risk investment regulation, 12 CFR 563.9–8(f). *See* 54 FR at 15427 (April 18, 1989). Under this treatment, all investments in Fannie Mae and Freddie Mac stock—regardless of when purchased—would be considered equity-risk investments, but the Board would "grandfather"—rather than exclude—those investments in Fannie Mae and Freddie Mac stock made on or before December 14, 1988 for purposes of applying the regulation. As such, an institution whose holdings of Fannie Mae and Freddie Mac stock pushed the institution over its equity-risk investment threshold, as set at 12 CFR 563.9–8(c)(2), would not have to divest itself of such holdings solely for that reason; nevertheless, the institution could not make any additional equity-risk investment without PSA approval or divestment. The Board believed that this grandfathering treatment was necessary because it continued to consider the risks inherent in investment in such stock equally concrete for stock purchased on or before December 14, 1988, as for stock purchased afterward.

For the reasons set forth in the preambles to the original proposal and the reproposal, and those discussed in the following section, the Board continues to believe that Fannie Mae and Freddie Mac stock deserve inclusion as "equity securities," and therefore, as equity-risk investments. *See* 54 FR at 15427–28; 54 FR at 156–57. The Board today is adopting the final regulation substantially in the form of the reproposal, with a modification in the treatment of previously held Fannie Mae and Freddie Mac stock for purposes of the diversification requirement of the equity-risk investment regulation. The following section discusses the comments received on the reproposal and the Board's response.

Summary of Comments and Board Response

The Board received three comment letters in response to the April reproposal.[1] One of the comments was from an insured institution and two were from trade associations.[2] One of the comment letters supported the reproposal as drafted. This commenter reiterated its comment to the original proposal, stating that there was no basic distinction between the risk inherent in publicly traded Fannie Mae and Freddie Mac stock and "the stock of other reputable companies traded on public exchanges."

Two commenters disputed the premise of both the original proposal and the reproposal by stating that the risk inherent in investments in Fannie Mae and Freddie Mac stock does not rise to the level of other equity-risk investments. One of these commenters maintained that the reproposal is "unfair" because it does not take into account the change in risk to an institution with the passage of time, based on the "changing relationship between carrying value and price." The commenter also contended that the recent upswing in values of Fannie Mae and Freddie Mac stock indicate "a high degree of profitability and moderate market risk." The commenter argued that such holdings were important to a balanced thrift portfolio and characterized them as having a "counter-risk investment effect" to fluctuations in interest rates. That commenter also questioned whether the Board could regulate retroactively to cover investments made on or after December 14, 1988. It also argued that if the Board decides to go forward with its reproposal, the Board should also grandfather the covered investments in Fannie Mae and Freddie Mac stock with respect to the equity-risk investment diversification requirement, 12 CFR 563.9–8(e), in addition to the proposed grandfathering of the rule's threshold requirements. The other opposing commenter reiterated the point it had raised in its comment on the original proposal that classification of Fannie Mae and Freddie Mac stock as both equity-risk investments and components of the Board's "Qualified Thrift Lender" ("QTL") test would be "operational[ly] inconsistent."

Inclusion of Fannie Mae and Freddie Mac Stock as Equity-Risk Investments/ Grandfathering Equity-Risk Thresholds

The Board is unpersuaded by the arguments that Fannie Mae and Freddie Mac stock are inherently less risky than all other equity securities currently included as equity-risk investments. First, while the recent market performance of Fannie Mae and Freddie Mac stock has been impressive and both entities have been managed effectively, this *recent* performance is by no means a guarantee of future market performance.[3] Instead, it represents a period where the Standards & Poors 500 index has itself shown a rapid rise.[4] One commenter asserts, without supporting empirical data, that other equity-risk investments are "much riskier" than the stock at issue in today's rule. The commenter's case for excluding Fannie Mae and Freddie Mac stock from the "equity security"

[1] Two of those commenters had also commented on the Board's original proposal.

[2] The Board received six comment letters in response to its original proposal. *See* 54 FR at 15427. Those comments were discussed in the preamble to the Board's reproposal. *Id.*

[3] The Board similarly finds unpersuasive the argument raised by one commenter that Fannie Mae and Freddie Mac stock are critical to a well balanced portfolio because they demonstrated "a counter-risk investment effect" to changes in interest rates. The Board believes that while the limited time frame chosen by the commenter for its analysis may lead to this conclusion, a different scenario is certainly possible where an increase in interest rates may not coincide with an increase in the equity securities markets, as has occurred in the past.

[4] The period chosen by the commenter to demonstrate the stellar performance in stock issued by Fannie Mae and the Student Loan Marketing Association ("Sallie Mae") was from December 1987 until June 1989. On December 1, 1987, the S&P 500 was at 232.00; on June 1, 1989, the index stood at 321.97. Similarly, the S&P 500 has shown a marked rise since January 1, 1989, the day Freddie Mac preferred stock became publicly traded.

Conspicuously absent from the commenter's analysis is any discussion of the performance of Fannie Mae, or for that matter Sallie Mae, stock during a downturn in the market in general. We believe that it is significant that the commenter chose to begin its analysis in December 1987, the period where the equity securities markets were just beginning to recover from the crash of October 19, 1987, popularly known as "Black Monday". A review of the week leading up to the October 19 downturn will demonstrate that the stocks at issue in today's final rule are, in fact, directly affected by market conditions. Specifically, in that week, Fannie Mae common stock fell from a high of 41½ to a fifty-two week low of 29½. Later that month the stock was trading as low as 27. Sallie Mae common stock lost over ten percent of its value on Black Monday alone.

definition could be made for many other equity securities using the same limited time frame. *See* nn. 3, 4, *supra.* A very different case could be made if a different, but similarly limited, time frame, including October, 1987, were selected. *See also* 54 FR 15427–28. In sum, there are no guarantees that all equity securities, including Fannie Mae and Freddie Mac stock, will not fluctuate considerably over time along with changes in the markets. The Board is, therefore, not dissuaded from its belief that Fannie Mae and Freddie Mac stock have characteristics that represent risks similar to those presented by other high-quality equity securities.

One commenter faults the Board for failure to take into account the change in the riskiness of Fannie Mae and Freddie Mac stock based upon the changing relationship between carrying value and price over time. While market-value accounting has merit, it is not appropriate to use that method in the context of the equity-risk investment regulation for certain assets, such as the stock at issue today, but not for others. For the purposes of today's rule, the Board believes that the best course of action is to treat the equity securities at issue consistently with other equity-risk investments.[5]

This commenter also contends that the Board should change the reproposal to grandfather all investments made as of the effective date of the regulatory change, rather than as of December 14, 1988. Without this change, the commenter argues, the Board would be regulating retroactively. The Board remains of the view expressed in its original proposal that it is imperative to eliminate any incentive for institutions to increase their equity-risk investments in anticipation of any final rule. The Board believes this concern still to be valid, and consequently has determined to retain the proposed grandfathering date of December 14, 1988. It notes that this is consistent with the treatment of former additions to the list of equity-risk investments. *See* 12 CFR 563.9–8(f).

Another commenter reiterated an assertion made in response to the Board's original proposal that the Board's proposal to make Fannie Mae and Freddie Mac stock equity-risk investments was inconsistent with the Board's previous ruling that such investments satisfied an insured institution's Qualified Thrift Lender ("QTL") requirements.[6] The Board responded to this comment in the preamble to the reproposal and, upon review, adheres to its earlier analysis. *See* 54 FR at 15428. As discussed in that preamble, the Board believes that the QTL and equity-risk investment tests were designed for different purposes and are not mutually exclusive, finding no support for the commenter's assertion that "Congress implied that the housing-related benefits of owning these agency stocks outweighed any potential risks of such ownership."

Grandfathering Equity-Risk Investment Rule Diversification Requirement

In addition to any other limitation placed on an insured institution's equity-risk investments by the threshold provision at 12 CFR 563.9–8(c)(2), the equity-risk investment regulation also contains a diversification limitation on the purchase of equity securities. *See* 12 CFR 563.9–8(e)(1). Specifically, that provision states that except as otherwise provided, "no insured institution shall at any time own, control, or hold with power to vote for its own account more than 25 percent of any one class of the outstanding equity securities of any one issuer nor an amount of all classes of the outstanding equity and debt securities of such issuer which, when aggregated with loans to such issuer, are greater than the institution's 'regulatory capital' * * * ." *Id.*

One commenter contends that failure to grandfather the foregoing provision as part of today's rule could effectively nullify the Board's action of grandfathering Fannie Mae and Freddie Mac stock for purposes of the equity-risk investment threshold. The commenter further states that failure to grandfather Fannie Mae and Freddie Mac stock holdings for purposes of diversification would be especially troubling because the diversification provision contains a limitation on an insured institution's holdings of the "equity *and debt* securities" of the issuing instrumentality. Upon review, the Board believes that these contentions have merit. Thus, the final regulation includes an express grandfathering of such investments from the requirements of subsection (e)(1). The Board did not intend to create a back-door limitation on stock holdings otherwise properly grandfathered. Many insured institutions have substantial holdings in relatively risk-free Fannie Mae and Freddie Mac debt securities. Upon reconsideration, the Board believes no useful purpose would be served by, in effect, penalizing such institutions for holding debt instruments not otherwise within the realm of concern of the equity-risk investment regulation. While today's final rule covers only those two U.S. government-sponsored instrumentalities, the Board may revisit the issue with respect to all privately issued debt securities at a later date.

Equity Securities of U.S. Government-Sponsored Corporations as Pre-Authorized Equity-Risk Investments

Commenters on the reproposal did not address the addition of Fannie Mae and Freddie Mac stock to the list of permissible equity security investments for equity-risk purposes, pursuant to 12 CFR 563.9–8(d)(1).[7] This section does not, in and of itself, provide the authority for an insured institution to invest in the listed equity securities. It merely provides that when such investments are otherwise within the institution's authority, supervisory preapproval of such investments for purposes of the equity-risk investment regulation is not required. Fannie Mae and Freddie Mac stock are expressly authorized investments for Federal associations pursuant to section 5(c)(1)(F) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(c)(1)(F) (1982). As discussed above, investment in such securities appears no more or less risky than the other investments currently authorized as equity-risk investments in 12 CFR 563.9–8(d). Moreover, the Board has seen no data that indicates that the stock of any United States government

[5] The commenter argues that the Board's position would "prevent" an institution from swapping a greater than threshold amount of Freddie Mac stock for an equal amount of Fannie Mae stock, thus "freezing [the] institution into a larger (and more risky) than desired position in Freddie Mac." Notwithstanding the commenter's inconsistent assertions that Freddie Mac stock should not be classified as an equity-risk investment because it is not risky and that his insured institution should get out of its admittedly large position in such stock because it was "unduly risky," the Board is not persuaded by the commenter's point regarding a need for the free ability to swap excess "grandfathered" Freddie Mac stock for Fannie Mae stock. The stock of each organization has its own characteristics and risks. Nevertheless, the commenter's institution is not prevented from making the swap; instead, it is free to do so with PSA approval, in compliance with the equity-risk investment regulation.

[6] The key component of the QTL test, enacted in the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100–86, 101 Stat. at 571–73, § 104(c)(1) (1987), was that insured institutions were required to hold at least 60 percent of their tangible assets in certain "qualified thrift investments" in order to qualify for favorable QTL treatment. *See* 53 FR 312 (Jan. 6, 1988). Stock issued by Fannie Mae and Freddie Mac were among the investments approved by the Board as housing-related investments. *Id.* at 313, 322 (codified at 12 CFR 563.27(c)(6) (1988)).

[7] This provision of the regulation provides that an insured institution could invest in Fannie Mae and Freddie Mac stock up to otherwise authorized thresholds, without having to acquire the approval of the institution's PSA.

sponsored corporation should not be such a preapproved investment.[8] Therefore, investments in equity securities issued by all United States government-sponsored corporations, including Class A common stock recently issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac") have been added to the list of permissible investments.

Effective Date of the Final Rule

Although today's final regulation will not be administered until the "effective date" listed above, the regulation should be considered "in effect" as of the date of publication in the **Federal Register** for the purpose of transferring the regulatory changes made in this rule to any successor agency, following enactment of the banking legislation.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objections and legal basis underlying the final rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the reproposal.

2. *Small entities to which the final rule would apply.* The final rule would apply to all insured institutions.

3. *Impact of the final rule on small entities.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). The final rule treats all institutions identically regardless of their size for the reasons discussed in the **SUPPLEMENTARY INFORMATION** set forth above.

4. *Overlapping or conflicting federal rules.* There are no known rules that duplicate, overlap or conflict with this final rule.

5. *Alternative to the rule.* There are no alternatives that would be less burdensome than the final rule in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

According, the Federal Home Loan Bank Board amends part 563, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Amend § 563.9–8 by revising paragraphs (b)(2)(i) and (d)(1)(iv); and by adding a new paragraph (f)(4) to read as follows:

§ 563.9–8. Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

* * * * *

(b) *Definitions.* * * *

(2) * * * (i) Stock issued by a Federal Home Loan Bank or a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968; * * *.

* * * * *

(d) *Equity-security investments*—(1) *Permissible investments.* * * * (iv) Equity securities issued by any United States government-sponsored corporation, including the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, and the Federal Agricultural Mortgage Corporation; * * *.

* * * * *

(f) *Savings clause.* * * *

(4) An institution whose aggregate actual or prospective equity-risk investments on December 14, 1988 were in compliance with its applicable thresholds on that date, including compliance as a result of applying the savings clauses of paragraphs (f)(1) through (3) of this section or of securing PSA approval of otherwise nonconforming levels of investment, but would exceed those thresholds because of the inclusion of investments in stock issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, shall not be prohibited solely for that reason from maintaining its full investment in such stock made as of December 14, 1988; nor shall an institution be required to divest any investments solely because of a subsequent change in its assets or its regulatory capital; nor shall an institution be in violation of paragraph (e)(1) of this section solely by maintaining its full investment in such stock made as of December 14, 1988: Provided, That additional equity-risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to Principal Supervisory Agents to prohibit equity-risk investments or to require the reduction of aggregate equity-risk investment or the divestiture of specific equity-risk investments.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19175 Filed 8–16–89; 8:45 am]

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[8] Stock issued by the Student Loan Marketing Association is already included on that list.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–53–AD; Amdt. 39–6298]

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAC 1–11 200 and 400 series airplanes, which requires inspection of the thrust reverser cables, and replacement, if necessary. This amendment is prompted by reports of inadvertent operation of the thrust reverser due to improper routing of the thrust reverser cable. This condition, if not corrected, could lead to an uncommanded thrust reverser selection, either on the ground or immediately prior to touchdown when the throttles are closed.

EFFECTIVE DATE: September 21, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletin, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane

Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires inspection of the thrust reverser cables, and replacement, if necessary, was published in the Federal Register on May 10, 1989 (54 FR 20142).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

All of the commenters supported the rule; however, one commenter objected to a statement in the Summary section of the preamble that indicated the thrust reverser cables were incorrectly routed during production. After further review of the data, the FAA acknowledges that there is no evidence to substantiate that the incorrect rerouting occurred during production. Accordingly, the words "during production" have been deleted from the Summary section.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent uncommanded thrust reverser selection, accomplish the following:

A. Prior to the accumulation of 1,500 landings or within 3 months after the effective date of this AD, whichever occurs first, inspect the thrust reverser cables to determine correct installation, in accordance with British Aerospace Alert Service Bulletin 76-A-PM5978, Issue No. 1, dated November 14, 1988.

B. If thrust reverser cables are found to be worn or damaged, or if cables are found to be incorrectly routed, replace prior to further flight, in accordance with the maintenance manual referenced in British Aerospace Alert Service Bulletin 76-A-PM5978, Issue No. 1, dated November 14, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington. This amendment becomes effective September 21, 1989.

Issued in Seattle, Washington, on August 7, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19287 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-167-AD; Amdt. 39-6297]

Airworthiness Directives; British Aerospace Model BAe/DH/BH/HS 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe/DH/BH/HS 125 series airplanes, which requires inspection of the elevator mass balance side plate assembly and spigot for corrosion, and repair, if necessary; the application of corrosion protection treatment; and installation of corrosion resistant monel rivets in the elevator balance weight structure. This amendment is prompted by reports of corrosion on the elevator mass balance side plate assembly and the balance weight spigot. This condition, if not corrected, could lead to displacement of the side plate which could cause control surface interference and jamming of flight controls.

EFFECTIVE DATE: September 21, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the

Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to British Aerospace Model BAe/DH/BH/HS 125 series airplanes, which requires an inspection of the elevator mass balance side plate assembly spigot for corrosion, and repair, if necessary; the application of corrosion protection treatment; and installation of corrosion resistant monel rivets in the elevator balance weight structure, was published in the **Federal Register** on June 14, 1989 (54 FR 24289).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 420 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $168,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace (BAe), PLC: Applies to Model BAe/DH/BH/HS 125 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent control surface interference and jamming of the flight controls, accomplish the following:

A. Within 3 years since date of airplane manufacture or within 60 days after the effective date of this AD, whichever occurs later, accomplish the following:

1. Inspect the elevator mass balance weight side plate assembly and balance weight spigot for corrosion in accordance with BAe Service Bulletin 27-142, Revision 2, dated June 10, 1987. Any corrosion detected as a result of this inspection must be repaired prior to further flight, in accordance with the service bulletin.

2. Apply corrosion protection treatment and install Monel Rivets, Part Number MS9318-052, or British Standard Specification SP 88-304 rivets in the elevator balance weight structure, in accordance with BAe Service Bulletin 27-142, Revision 2, dated June 10, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 21, 1989.

Issued in Seattle, Washington, on August 7, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19288 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-15-AD; Amdt. 39-6300]

Airworthiness Directives; Schweizer Model G-164 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Schweizer Model G-164 series airplanes which requires a visual inspection for corrosion and cracks on the forward and aft elevator push-pull rod assemblies. This amendment is prompted by a recent in-flight failure of the aft elevator push-pull rod assembly which resulted in the loss of the airplane, and by four previous reports of extensive corrosion and cracking. The actions specified in this AD will detect and correct this condition and preclude loss of the aiplane.

DATES: *Effective Date:* September 15, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Schweizer Service Bulletin No. 85, dated June 1, 1989, applicable to this AD may be obtained from Schweizer Aircraft Corporation, Post Office Box 147, Elmira, New York 14902. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Al Maila, Aerospace Engineer, New York Aircraft Certification Office, ANE-172, FAA, New England Region, 181

South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION: As a result of a number of field reports of cracks occurring at the ends on the aft push rod assembly of the elevator control system on Schweizer Model G–164 series airplanes, the manufacturer issued AG–CAT Service Letter No. 32, dated January 27, 1982, advising AG–CAT operators to program regular and frequent cleaning operations of the airplane. The chemicals dispensed by operators, together with maintenance procedures used, have a bearing on the failures of the push rod assemblies which were caused by corrosion. As a result, the FAA published a General Aviation Alert, AC No. 43–16, Alert No. 57, dated April 1983, pertaining to a Schweizer Model G–164D push rod assembly noting that during annual inspection, corrosion was noted around the through-bolts which attached to the end fitting. On June 12, 1984, Transport Canada informed the FAA that an operator had found moisture and corrosion in the forward end of the aft elevator push rod assembly. Also, another operator in Canada, with five Grumman Model G–164 airplanes, had found moisture but no corrosion in the elevator control push-pull rods. As a result of a recent in-flight failure due to corrosion damage, the manufacturer has issued Service Bulletin No. 85, dated June 1, 1989, which describes procedures for inspection, repair, and replacement of the elevator control system push-pull rod assemblies. Due to the nature of the reported failures and the non-routine nature of the inspections and maintenance specified in this service information, the FAA has determined that AD action is warranted. Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring visual inspections of the forward and aft elevator push-pull rod assemblies for corrosion and cracks and the repair or replacement of the defective assemblies on all Schweizer Model G–164 series airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days. The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption **"ADDRESSES"** at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Schweizer (Grumman): Applies to Model G–164 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD, unless previously accomplished.

To prevent the failure of the forward and aft elevator control system push-pull rods and end fittings, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, and thereafter at intervals not to exceed 12 calendar months, visually inspect the forward and aft elevator push-pull rod assemblies and end fittings for corrosion and cracks in accordance with the Procedure Section in Schweizer Service Bulletin No. 85, dated June 1, 1989.

(b) If corrosion or cracks are found, prior to further flight, replace or repair the defective assembly in accordance with the Procedures Section of Schweizer Service Bulletin No. 85, dated June 1, 1989, utilizing the replacement parts specified in Figure 1 or 2 therein, as applicable, and continue the repetitive inspections specified in paragraph (a) of this AD.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902, or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 15, 1989.

Issued in Kansas City, Missouri, on August 8, 1989.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19289 Filed 8–14–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90766–9163]

Revisions to the Commodity Control List Based on Coordinating Committee Review

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends three Export Control Commodity Numbers (ECCNs) on the CCL: 1203A, 1359A, and 1526A. These revisions have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries.

The revisions to ECCN 1203A correct errors contained in the entry, thereby

bringing it into compliance with current COCOM controls. The rule amends ECCN 1526A to reduce the number of items subject to validated license controls. This change will reduce the paperwork burden on the public by decreasing the number of license applications that must be submitted. ECCN 1359A is amended to conform with the revisions to ECCN 1526A.

EFFECTIVE DATE: This rule is effective August 17, 1989.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature on ECCN 1203A, call Larry Hall, Office of Technology and Policy Analysis, Telephone: (202) 377–8550.

For questions of a technical nature on ECCNs 1359A and 1526A, call Joe Westlake, Office of Technology and Policy Analysis, Telephone: (202) 377–0730.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is being issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 79 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 1203A is amended by removing (Advisory) Note 1, and by redesignating (Advisory) Note 2 for the People's Republic of China as "(Advisory) Note 3 for the People's Republic of China", as follows:

1203A Electric furnaces, specially designed components and controls therefor.

* * * * *

List of Electric Vacuum Furnaces Controlled by ECCN 1203A

* * * * *

(d) * * *

(2) * * *

Note 1: * * *

Note 2: * * *

(Advisory) Note 3 for the People's Republic of China:

* * * * *

3. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1359A is amended by revising the phrase "ECCN 1526(f)" to read "ECCN 1526(e)" in the heading and in the Advisory Note for the People's Republic of China.

4. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1526A is amended by revising the *"GFW Eligibility"* paragraph;

By removing paragraph (b) and the Note that follows paragraph (b);

By redesignating paragraph (c) as new paragraph (b);

By adding the word *"or"* immediately following newly redesignated paragraph (b)(4);

By redesignating paragraphs (d), (e), and (f) as new paragraphs (c), (d), and (e);

By revising Notes 1 and 2 following newly redesignated paragraph (e);

By revising (Advisory) Note 4; and

By adding a new (Advisory) Note 5 for the People's Republic of China, as follows:

1526A Optical fibers, optical cables and other cables and components and accessories.

Controls for ECCN 1526A

* * * * *

GFW Eligibility: Commodities that meet the technical specifications described in sub-paragraphs (b) (1), (2) and (3) and paragraph (e) of the List of Cable controlled under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c).

List of Commodities Controlled by ECCN 1526A

* * * * *

(e) * * *

Note 1: Sub-paragraph (d) of ECCN 1526A does not control cable that is "armored" by only either a tough outer sheath or an electromagnetic screen.

Note 2: Associated equipment for sub-paragraphs (a), (b), and (c), and specially designed components therefor, are covered under ECCN 1519A.

Note 3: * * *

(Advisory) Note 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of silica-based optical fibers and optical cable, other cable, connectors and couplers controlled by sub-paragraphs (a), (b)(1) to (b)(4), or (e) of ECCN 1526A, provided that:

(a) The cable, optical fibers, connectors or couplers are for a specific civil end-use;

(b) The quantities of cable, optical fibers, connectors or couplers are normal for the purpose;

(c) The optical fibers specially designed for the underwater use:

(i) Are not controlled by sub-paragraph (b)(1) of ECCN 1526A; and

(ii) Have performance characteristics inferior to those described in sub-paragraphs (b)(2) or (b)(3); *and*

(d) Connectors and couplers controlled by sub-paragraph (e) are not:

(i) Fiber-optic bulkhead or hull penetration connectors, specially designed for use in ships or vessels; *or*

(ii) Wavelength division multiplex type fiber-optic couplers.

(Advisory) Note 5 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of optical fibers controlled by sub-paragraph (c)(2), when exported for identifiable civil applications, having all of the following characteristics:

(a) Not fabricated to be nuclear radiation sensitive;

(b) A "beat length" of more than 50 cm (low birefringence); *and*

(c) Not optimized for operation at any wavelength exceeding 1,370 nm.

Dated: August 11, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-19268 Filed 8-16-89; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Exchange of Futures for Cash Commodities or in Connection With Cash Commodity Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rule.

SUMMARY: The Commodity Futures Trading Commission has adopted final Regulation 1.35(a-2), 17 CFR 1.35(a-2), which requires futures commission merchants ("FCMs"), introducing brokers ("IBs"), and other contract market members to request from their customers, upon request of the Commission, the United States Department of Justice, or a contract market, documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions.[1] Final Regulation 1.35(a-2) also requires customers to create, retain, and produce such documentation to the requesting body. The final regulation defines documentation as "those documents customarily generated in accordance with cash market practices." Final Regulation 1.35(a-2) also requires that all contract markets adopt, as necessary, corresponding rules requiring members to provide such documentation to the contract market, the Commission, or the United States Department of Justice upon request.

EFFECTIVE DATE: New Commission Regulation 1.35(a-2) becomes effective November 15, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia C. Apfelbaum, Assistant Director, or Elizabeth A. Patterson, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

The total public reporting burden for the collection of information which includes this final regulation is estimated to average 80.83 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the entire collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038-0022), Washington, DC 20503.

II. Introduction

On November 16, 1988, the Commission published a proposal to amend Commission Regulation 1.35 by adding a new paragraph (a-2) which would have required FCMs, IBs, and other contract market members to request from their customers, upon request of the Commission, the United States Department of Justice, or a contract market, documentation of cash transactions underlying EFPs. 53 FR 46089. Proposed Regulation 1.35(a-2) would have required customers to create, retain, and produce such documentation to the requesting body via the FCM, IB, or contract market member. The proposed regulation defined documentation as "those documents customarily generated in accordance with cash market practices." The Commission also proposed to amend Regulation 1.35 to require that all contract markets adopt, as necessary, corresponding rules requiring members to provide such documentation to the contract markets, the Commission, or the United States Department of Justice upon request.

In proposing to add new paragraph (a-2) to Regulation 1.35, the Commission noted that ensuring the availability of records of cash transactions underlying EFPs is essential to the success of exchange surveillance programs for monitoring EFPs and determining whether they are bona fide. 53 FR 46090. The Commission further noted that access to such records is "necessary to the Commission's ability to monitor the effectiveness of the exchanges' surveillance programs with respect to EFPs and to the Commission's ability to review such trades in the course of routine trade practice surveillance or specific investigations." Id. Records of these cash transactions should allow the Commission and the exchanges to verify the occurrence of the cash transaction and to review the prices and other terms of those transactions in connection with any inquiry into the legitimacy of an EFP. Finally, the Commission stated its belief in the appropriateness of requiring "customers, who are parties to cash transactions and therefore have the best access to the requested documents, to produce those documents for examination." Id.

III. Comments and Commission Response

The Commission requested comment on the proposed amendments and received eleven written responses.[2] Although the majority of the commenters did not dispute the appropriateness of collecting and reviewing customer cash transaction documentation,[3] the commenters did raise a number of questions and criticisms related to specific aspects of the Regulations. The Commission has carefully reviewed the comments received, and has adopted the rule essentially as proposed, with certain modifications and clarifications. The

[1] These transactions are referred to in section 4c(a) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6c(a), and Regulation 1.38(b), 17 CFR 1.38(b), as exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions, but are more commonly known as exchanges of futures for physicals ("EFPs").

[2] This request elicited wirtten comment from: (1) Kansas City Board of Trade; (2) Coffee, Sugar & Cocoa Exchange, Inc.; (3) New York Mercantile Exchange; (4) Chicago Mercantile Exchange; (5) Futures Industry Association; (6) National Grain and Feed Association; (6) Geldermann, Inc.; (8) Salomon Brothers, Inc.; (9) Walters Trading and Investment Company; (10) Cargill, Inc.; and (11) The Wright-Lorenz Grain Co., Inc.

[3] Two commenters voiced their disapproval of the proposed amendments as "unnecessary regulation."

comments are discussed below in the context of each subparagraph of final Regulation I.35(a–2).

A. Subparagraph (a–2)(1)—Collection of Customer Documentation by FCMs, IBs, and Members of Contract Markets

In the November 16, 1988, **Federal Register** release, the Commission proposed to amend Regulation 1.35 by adding a new subparagraph (a–2)(1) which would have required FCMs, IBs, and members of contract markets, upon request of the exchange, the Commission, or the United States Department of Justice, "to obtain from [their] customers and to provide to the requesting body" documentation of cash transactions underlying EFPs. Six commenters stated that proposed subparagraph (a–2)(1) inappropriately placed the burden of production of customer-held documents on FMCs, IBs, and contract market members by requiring that such entities "obtain" and "provide" customer cash documentation. The commenters contended that the proposed subparagraph would have created a new regulatory liability (and a corresponding potential for sanction) for an FCM, IB, or contract market member which requested cash documentation, but failed to receive it from the customer.

Although the Commission did not intend that subparagraph (a–2)(1) be so read, the Regulation, as drafted, could be so interpreted. Accordingly, the Commission has determined to revise subparagraph (a–2)(1) to make clear that FCMs, IBs, and contract market members are required to act as intermediaries for document production between customers and the requesting body. Thus, subparagraph (a–2)(1) of Regulation 1.35, as adopted, states that each FCM, IB, and contract market member "shall request from its customers and, upon receipt thereof, provide to the requesting body" customer cash documentation.

In connection with revising this language, the Commission reminds FCMs, IBs, and contract market members that their role as conduit between the customer and the contract market, the Commission, or the United States Department of Justice is not without attendant duties. First, upon request of one of the foregoing bodies, the FCM, IB, or contract market member must promptly request that the customer provide cash documentation. Second, after receiving the requested customer documents, the FCM, IB, or contract market member must expeditiously forward the documents to the requesting body. Finally, if the documents are not forthcoming, the FCM, IB, or contract market member must so inform the requesting body, in order that the contract market, the Commission, or the United States Department of Justice may take appropriate action. Of course, FCMs, IBs, and contract market members remain responsible for their document retention and production duties under Regulation 1.38(b), 17 CFR 1.38(b), Regulation 1.35(a), 17 CFR 1.35(a), and Regulation 18.05, 17 CFR 18.05.

B. Subparagraph (a–2)(2)—Customer Production of Documentation Upon Request

Proposed subparagraph (a–2)(2) would have required all customers of FCMs, IBs, and contract market members to create, retain, and produce upon request of the FCM, the IB, the contract market member, the exchange, the Commission, or the United States Department of Justice documentation of the cash transactions underlying EFPs. Customers would have been required to retain the documents for five years, pursuant to Regulation 1.31(a)(1), 17 CFR 1.31(a)(1), and to produce the documents to the specified entities promptly upon request.

One commenter noted that the proposed language "was so broad as to allow an FCM, IB, or contract market member to require documentation in the ordinary course of business without such demand being based upon a request from one of the regulatory authorities." The commenter argued that the proposed language could allow firms access to customer records for purposes other than the transmission of documents from the customer to the requesting body. The Commission found merit in this comment and, accordingly, determined to revise subparagraph (a–2)(2) by deleting FCMs, IBs, and contract market members from the list of "requesting bodies."

Several commenters also expressed concern about the confidentiality of customer records under the Regulation as proposed. The commenters asserted that the proposed Regulation would have permitted a firm (*e.g.*, an FCM) to discover, by virtue of its role as a transmitter of documents, the terms on which, and the parties with whom, its customers were conducting business. The commenters asserted that this intermediary role of FCMs, IBs, and contract market members potentially could harm customers because such firms may be competitors of customers in the cash market. Given those commenters' concerns, the Commission has decided that customers, if they so desire, may provide documents directly to the requesting body, bypassing the FCM, IB, or contract market member which relayed the request. In this connection, to avoid unnecessary duplication of efforts, firms may wish to require that their customers notify them of any document production made directly to the requesting entity by the customer.

C. Subparagraph (a–2)(3)—Requirement that Contract Markets Adopt Rules Pertaining to Document Production

The language of final subparagraph (a–2)(3) is identical to that originally proposed by the Commission. The subparagraph requires each contract market to adopt rules mandating that its members produce documentation of cash transactions underlying EFPs.

One commenter asserted that subparagraph (a–2)(3) is unnecessary because exchanges already have the right to demand that their members produce documents that underlie EFP cash transactions. Although the Commission does not dispute the accuracy of the commenter's statement, the Commission nevertheless believes that each exchange should set forth the EFP document production requirement affirmatively in the interest of fully notifying market participants of their obligations and in order to promote consistent treatment of all transactions by all exchanges. Of course, as the Commission indicated in its original proposal, only those exchanges which do not have such an affirmative provision need take regulatory action in order to comply with new Regulation 1.35(a–2). 53 FR 46091.

D. Subparagraph (a–2)(4)—Definition of "Documentation"

Finally, the Commission has adopted subparagraph (a–2)(4) as proposed. The subparagraph states that documentation, as defined in Regulation 1.35(a–2), consists of those documents "customarily generated in accordance with cash market practices which demonstrate the existence and nature of the cash transactions, including, but not limited to, contracts, confirmation statements, telex printouts, invoices, and warehouse receipts or other documents of title." [4]

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[4] As previously noted, the Commission understands that commercial practices in the markets in which EFPs are transacted contemplate that some documentation of the cash transaction will be created. 53 FR 46091. The Commission has stated further that "* * * a customer's inability to produce such documentation would create a strong inference that an EFP is not bona fide." 53 FR 46090.

Several commenters expressed concern that the Commission intended to require that customers submit documentation generated by or in the custody of independent third parties. The commenters stated that documentation in the hands of third parties might be inaccessible to customers, so that customers might be held liable for non-production of documents which were beyond their physical control. The Commission intends that customers retain and produce those documents which are "customarily generated in accordance with cash market practices" and which customers ordinarily would possess or to which they would have access. Thus, the rule would not impose liability on a customer for failure to produce documents which were retained beyond the customer's control.

IV. Implementation Time of Regulation 1.35(a-2)

Final Commission Regulation 1.35(a-2) will beome effective 90 days after the date of publication of the final rule. The delayed effective date should provide ample time for the affected entities to adopt compliance procedures and for exchanges, as necessary, to adopt and submit to the Commission, pursuant to section 5a(12) of the Act, rules consistent with the requirements of Regulation 1.35(a-2)(3).

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq., requires that agencies, in proposing rules, consider the impact of the rules on small businesses. Regulation 1.35(a-2), as promulgated, would affect contract markets, FCMs, IBs, contract market members, and the customers of FCMs, IBs, and contract market members. The Commission previously has determined that contract markets are not "small entities" for the purposes of the RFA, and that the Commission need not, therefore, consider the effect of proposed amendments on contract markets in relation to the RFA. 47 FR 18618, 18619, April 30, 1982. The Commission has also determined that FCMs should be excluded from the definition of "small entity" based upon the fiduciary nature of the FCM/customer relationships as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619, April 30, 1982.

With respect to IBs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered small entities and, if so, to analyze the economic impact on such entities at that time. 48 FR 34248, 35275-78, August 3, 1983. Final Regulation 1.35(a-2) will have little effect on IBs, regardless of size. Pursuant to existing Commission Regulation 1.57, 17 CFR 1.57, IBs will never handle customer EFPs independently. Regulation 1.57 requires that IBs open and carry customer accounts with FCMs on a fully-disclosed basis and that they transmit customer orders to FCMs. Given this fact, the FCMs, not the IBs, would have primary responsibility for customer document transmission. As a practical matter, an IB would be approached for customer documents only if an FCM failed to request and forward customer documents and the requesting entity determined not to request documents directly from the customer. Thus, IBs of any size should not be burdened significantly by the final rules.

Like IBs, non-FCM members seldom will be called upon to request and provide documentation of customer EFPs. Non-FCM members generally transact EFPs for their own accounts. In those instances where non-FCM contract market members may act as brokers to arrange EFPs between customers, those members will handle both the cash and the futures portions of the trade and will be acting as IBs. In some circumstances, however, the member may act as broker between customers only as to a cash transaction, which becomes part of an EFP cleared through an FCM. In such cases, which are likely to occur infrequently, the member only would be approached for the cash documentation if the FCM clearing the EFP failed to request and forward customer documents and if the requesting entity chose not to request documentation directly from the customer. Therefore, the final rules should not place a significant burden on non-FCM members of any size.

Finally, the Commission does not believe that final Regulation 1.35(a-2) significantly will affect customers of FCMs, IBs, or contract market members that are also small businesses. For most EFPs, an FCM or contract market member will take the opposite side of the customer transaction and thus will be required to create and retain documentation and to report those transactions under existing Regulation 1.35(a). For most EFPs, then, the participating FCM or contract market member will be the primary source for obtaining documentation of the cash transaction.[5]

In most markets, customers using EFPs generally will be large entities such as commercial market participants (producers, users, etc.), trade houses, institutions, banks, pension funds, and dealers. EFP users in the currency and metals markets are also primarily large entities (i.e., banks, bullion dealers, etc.) However, some participants, although not a substantial number—particularly professional traders, small trade houses, small corporations and other businesses—may be "small entities." To the extent that any small entities do fall within the purview of the final Regulation 1.35(a-2), the recordkeeping required to those entities will be relatively minor. First, the rule requires only that customers create, retain, and produce those documents customarily generated in accordance with cash market practices.[6] Customers presumably create and retain these documents in the normal course of business for general business, financial, and tax reasons. Second, the records of only a small number of transactions will be requested annually so the temporal and monetary impacts of document production on any single entity should be minimal.

Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1168 (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, has certified that this rule, as promulgated, will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission previously submitted this

[5] As noted above, however, the Commission intends that customers create, retain, and produce, upon request, those documents which are "customarily generated in accordance with cash market practices" and which customers ordinarily would possess or to which they would have access.

[6] Document retention under final Regulation 1.35(a-2) would fall within the five-year retention requirement of Commission Regulation 1.31(a), 17 CFR 1.31(a). Regulation 1.31(a) provides:

Section 1.31 Books and Records; Keeping and Inspection. (a)(1) All books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

rule in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on January 6, 1989, and assigned OMB control number 3038–0022 to the rule. The burden associated with this entire collection, including this final rule is as follows:

Average burden hours per response. 80.83
Number of respondents..... 470
Frequency of response..... On occasion

The portion of the OMB control number 3038–0022 public reporting burden specifically related to the collection of information pursuant to final Regulation 1.35(a–2) is estimated to average one-half hour per response for each of the 24 FCMs, IBs, or contract market members expected to be required to collect documents from customers transacting EFPs at nonreportable levels during a year.[7] This estimate includes time to request, obtain, organize, and provide documents to the Commission, the contract market, or the United States Department of Justice. Each of the estimated 24 customers transacting EFPs at nonreportable levels who are asked to provide documentation annually will spend an estimated one hour per response in locating, photocopying, and providing requested documents through an FCM, IB, or contract market member to the contract market, the Commission, or the United States Department of Justice. Finally, each of the estimated 570 other customers who would be required to maintain documents solely under Regulation 1.35(a–2) are expected to devote two hours to filing documents annually. The total annual public burden related to Regulation 1.35(a–2) is estimated to be 1,176 hours.

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Commodity futures, Contract markets, Customers, Exchanges of futures for physicals, Futures commission merchants, Introducing brokers, Members of contract markets, Noncompetitive trading, Reporting and recordkeeping requirements.

[7] Commission regulation 18.05 currently requires that each trader holding or controlling reportable positions keep records of all futures and cash commodity positions and transactions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4c, 4g, 5, 5a, 8, and 8a thereof, 7 U.S.C. 6, 6c, 6g, 7, 7a, 12, and 12a, the Commission hereby amends part 1 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.35 is amended by adding paragraph (a–2) to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

* * * * *

(a–2)(1) *Futures commission merchants, introducing brokers, and members of contract markets.* Upon request of the contract market, the Commission, or the United States Department of Justice, each futures commission merchant, introducing broker, and member of a contract market shall request from its customers and, upon receipt thereof, provide to the requesting body documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions.

(2) *Customers.* Each customer of a futures commission merchant, introducing broker, or member of a contract market shall create, retain, and produce upon request of the contract market, the Commission, or the United States Department of Justice documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions.

(3) *Contract markets.* Every contract market shall adopt rules which require its members to provide documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions upon request of the contract market.

(4) *Documentation.* For the purposes of this paragraph, documentation means those documents customarily generated in accordance with cash market practices which demonstrate the existence and nature of the underlying cash transactions, including, but not limited to, contracts, confirmation statements, telex printouts, invoices, and warehouse receipts or other documents of title.

* * * * *

Issued in Washington, DC on August 11, 1989 by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 89–15314 Filed 8–16–89; 8:45 am]

BILLING CODE 6351–01–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 213

Trade Remedy Assistance

AGENCY: U.S International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: This notice sets forth final rules that the U.S. International Trade Commission has adopted to revise part 213 of the Commission's Rules of Practice and Procedure. Part 213 sets forth the rules governing trade remedy assistance provided by the Commission through the Trade Remedy Assistance Office.

Notice of proposed rulemaking was published in the **Federal Register** on December 21, 1988 (53 FR 51281) and interested persons were given until February 6, 1989, to submit comments. None were submitted.

The revisions to part 213 conform the rules to the changes made in section 339 of the Tariff Act of 1930 (19 U.S.C. 1339) by section 1614 of the Omnibus Trade and Competitiveness Act of 1988 ("the Omnibus Trade Act"). The amendments provide that an office to be known as the Trade Remedy Assistance Office ("Office") is established in the Commission; that the Office shall provide advice and assistance concerning remedies and procedures under the trade laws identified in section 339 of the Tariff Act of 1930; and that the Office, in coordination with other agencies administering trade laws, shall provide technical assistance to eligible small businesses to assist them in seeking relief under the identified trade laws. Technical assistance shall be available to assist eligible small businesses in preparing complaints or petitions for relief and in any consequent administrative review or appeal to the administering agency.

The final rules adopted closely follow those proposed and published in the **Federal Register** of December 21, 1988 with the exception of (1) non-

substantive or grammatical changes to reduce redundant explanations and to make the final rules easier to understand; (2) the addition of a requirement that trade associations applying for technical assistance from the Trade Remedy Assistance Office provide a listing of members; (3) the removal of the application form for technical assistance from the rules themselves. The added requirement that trade associations applying for technical assistance provide a listing of members is intended to enable the Commission to verify the eligibility of such applicants. The application form for technical assistance was removed from the rules because the form itself does not affect the substantive requirements for obtaining technical assistance from the Trade Remedy Assistance Office.

EFFECTIVE DATE: September 18, 1989.

ADDRESSES: Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436.

FOR FURTHER INFORMATION CONTACT: Gary L. Kaplan, Director, Trade Remedy Assistance Office, U.S. International Trade Commission, telephone (202) 252–2200 or 1–800–343–9822. Hearing impaired individuals may obtain further information on this matter by contacting the Commission's TDD terminal at (202) 252–1810.

SUPPLEMENTARY INFORMATION: The Commission has determined that the revisions do not constitute a "major rule" within the meaning of Executive Order 12291 (Improving Government Relations) and do not exert a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Explanation of Revisions to 19 CFR Part 213

Section 213.1

Section 213.1 is amended to refer to the new statutory provisions in the Omnibus Trade Act, to identify the Trade Remedy Assistance Office, to incorporate the statutory requirement of assisting and advising interested parties concerning remedies and procedures under the trade laws listed in § 213.2(b) of this part, and to indicate that the Trade Remedy Assistance Office, in coordination with the other agencies responsible for administering these trade laws, shall provide technical assistance to eligible small businesses seeking relief under these trade laws.

Section 213.2

Existing § 213.2 has been deleted, because it is duplicative of the requirements for assistance set forth in existing § 213.4, renumbered as § 213.3.

Section 213.3

Section 213.3 is renumbered § 213.2. Section 213.3(a) is renumbered § 213.2(a) and amended to reflect the replacement of the "Trade Remedy Assistance Center" by the "Trade Remedy Assistance Office," to include and to correct the Office's address which appears in existing rule § 213.4, to incorporate the new statutory requirement of advising and assisting interested parties concerning remedies and procedures, and to provide that technical assistance, as defined § 213.2(d), is to be coordinated with the other agencies responsible for administering the trade laws listed in § 213.2(b).

Section 213.3(b) is renumbered § 213.2(b) and amended to replace the words "Trade Remedy Laws" with the term "Trade Laws," which appears in section 339 of the Tariff Act of 1930, and to list each of the trade laws in the statute since the Office is now required to provide technical assistance regarding all of these laws. Prior to passage of the Omnibus Trade Act, the Trade Remedy Assistance Center was responsible for providing technical assistance only with regard to those trade remedy laws administered by the Commission. Section 406 of the Trade Act of 1974 (19 U.S.C. 2436, relating to market disruption investigations) is also included in the list of trade laws in § 213.2(b). Although section 406 is not included in the trade laws listed in section 339 of the Tariff Act of 1930, it is administered by the Commission, it provides for relief similar to that which may be obtained under section 201 of the Trade Act of 1974, (19 U.S.C. 2251) and it is included in the list of "Trade Remedy Laws" appearing in existing § 213.3(b).

A new § 213.2(c) is added to define the term "administering agency" as used in these proposed rules and to identify the agency or agencies responsible for administering each of the trade laws listed in § 213.2(b)

Existing § 213.3(c) is renumbered § 213.2(d) and adds language indicating that technical assistance is available during administrative review or appeals to the administering agency. Under the prior law and the existing rule, technical assistance was limited to the period "up to the date of the filing of a petition or complaint at the Commission." Language has been added to reflect that technical assistance, which includes informal legal advice and assistance, does not include legal representation of an eligible small business or advocacy on its behalf, and that the receipt of such assistance does not ensure that the recipient will prevail in any trade remedy proceeding. *See* H.R. Rep. No. 40, 100th Cong., 1st Sess. 172–173 (1987). Language also has been added to this section to indicate that, as had been the practice of the Trade Remedy Assistance Center, the staff of the Office may consult with other Commission personnel when provding technical assistance.

Existing § 213.3(d) is renumbered § 213.2(e), but is otherwise without substantive change. Existing § 213.3(e) is renumbered § 213.2(f) and amended to refer to SBA size standards as the basis for determining the eligibility of a small business for technical assistance.

Section 213.4

Section 213.4 is renumbered § 213.3. Section 213.4(a) is renumbered § 213.3(a), retitled more appropriately "Application for Technical Assistance from Small Businesses," and amended to delete the Office's address and to add language that an application for assistance is available from the Office. Otherwise this section is substantively the same as existing § 213.4(a). Section 213.4(b) is renumbered § 213.3(b) and retitled more appropriately "Application for Technical Assistance from Joint Applicants, Trade Associations and Unions," but is substantively unchanged from existing § 213.4(b), except for the new requirement that trade associations must provide a list of members to be eligible for technical assistance. Sections 213.4(c) is renumbered § 213.3(c), retitled more appropriately "Determination of Eligibility and Notification of Determination," and amended to recite that the Office will make a determination of eligibility. Section 213.4(d) is renumbered § 213.3(d), but is not substantively changed from existing § 213.4(d).

Section 213.5

Section 213.5 is renumbered § 213.4 and amended to add the requirement that an eligible small business that has received technical assistance from the Office must disclose that fact in any petition, application or complaint filed with any other agency which administers the trade law under which remedies or benefits are sought. In the existing rule, such disclosure was only required for petitions or complaints filed with the Commission. This change is consistent with the requirement in the Omnibus Trade Act that the Office shall now provide technical assistance regarding all the listed trade laws.

Section 213.6

Section 213.6 is renumbered § 213.5, but is not substantively changed from existing § 213.6.

Section 213.7

Section 213.7 is renumbered § 213.6, but is not substantively changed from existing § 213.7.

Appendix A

Appendix A, which set forth an application form for obtaining technical assistance, has been deleted from the rules, because the form itself does not affect the substantive requirements for obtaining technical assistance from the Office.

List of Subjects in 19 CFR Part 213

Administrative practice and procedure, Imports, Small businesses, Trade remedy assistance.

19 CFR part 213 is revised as follows:

PART 213—TRADE REMEDY ASSISTANCE

Sec.

213.1 Purpose and applicability of part.
213.2 Definitions.
213.3 Determination of small business eligibility.
213.4 Disclosure of receipt of technical assistance.
213.5 Access to Commission resources.
213.6 Information concerning assistance.

Authority: Sec. 339 of the Tariff Act of 1930 (19 U.S.C. 1339), as added by sec. 221, Trade and Tariff Act of 1984 (Pub. L. 98–573, approved Oct. 30, 1984; 90 Stat. 2989), and as amended by sec. 1614, Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, approved Aug. 23, 1988; 102 Stat. 110); sec. 335, Tariff Act of 1930 (72 Stat 680; 19 U.S.C. 1335).

§ 213.1 Purpose and applicability of part.

(a) Section 339 of the Tariff Act of 1930, as amended, establishes in the Commission an office known as the Trade Remedy Assistance Office and directs the Commission to provide general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in § 213.2(b) and the procedures to be followed and appropriate filing dates in investigations under the trade laws. In coordination with other agencies administering the trade laws, the Trade Remedy Assistance Office also shall provide technical assistance, as defined in § 213.2(d), to eligible small businesses seeking to obtain the remedies and benefits available under the trade laws.

(b) The rules in this Part govern the establishment of the Trade Remedy Assistance Office, its function, small business eligibility for technical assistance and procedures for obtaining such assistance. Members of the public seeking general information from the Trade Remedy Assistance Office are not subject to the application procedures set forth in this Part.

§ 213.2 Definitions.

(a) *Office.* The Trade Remedy Assistance Office (hereinafter "Office") provides general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in § 213.2(b) and the procedures to be followed and appropriate filing dates in investigations under those trade laws. In coordination with other agencies responsible for administering the trade laws listed in § 213.2(b), the Office also provides technical assistance, as defined in § 213.2(d) to eligible small businesses that seek to obtain remedies and benefits under the trade laws. The Office's address is Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

(b) *Trade laws.* The trade laws (with respect to which general information and technical assistance are available) are defined as:

(1) Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to injury caused by import competition);

(2) Chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms);

(3) Chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(4) Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties);

(5) Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security);

(6) Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade); and

(7) Section 406 of the Trade Act of 1974 (19 U.S.C. 2436, relating to market disruption).

(c) *Administering agencies.* Administering agency refers to the agency or agencies responsible for administering a particular trade law. The trade laws relating to injury caused by import competition, unfair practices in import trade and market disruption are administered by the Commission. The trade laws relating to countervailing and antidumping duties are jointly administered by the Commission and the Department of Commerce. The trade laws relating to adjustment assistance for firms and safeguarding national security are administered by the Department of Commerce. The trade law relating to adjustment assistance for workers is administered by the Department of Labor. The trade law relating to relief from foreign import restrictions and export subsidies is administered by the United States Trade Representative.

(d) *Technical Assistance.* Technical assistance is informal advice and assistance, including informal legal advice, intended to enable eligible small businesses to determine the appropriateness of pursuing particular trade remedies, to prepare petitions and complaints (other than those which are frivolous in the opinion of the agency) and to seek to obtain the remedies and benefits available under the trade laws identified in § 213.2(b). Technical assistance is available to eligible small businesses at any time until the completion of administrative review or of an appeal to the administering agency regarding proceedings under the trade laws listed in § 213.2(b). Technical assistance does not include legal representation of an eligible small business or advocacy on its behalf and receipt of technical assistance does not ensure that the recipient will prevail in any trade remedy proceeding. The Office provides such technical assistance independently of other Commission staff but may consult with other staff as appropriate.

(e) *Applicant.* An applicant is an individual, partnership, corporation, joint venture, trade or other association, cooperative, group of workers, or certified or recognized union, or other entity that applies for techincal assistance under this part.

(f) *Eligible small business.* An eligible small business is an applicant that the Office has determined to be entitled to technical assistance in accordance with the SBA size standards and the procedures set forth in this part.

(g) *SBA size standards.* SBA size standards are the small business size standards of the Small Business Administration set forth in 13 CFR 121.2. The SBA size standards categorize business concerns according to the Standard Industrial Classification ("SIC") code of the Bureau of the Census and base the size determination upon the number of employees or annual receipts of the business concern in the appropriate SIC category.

§ 213.3 Determination of small business eligibility.

(a) *Application for technical assistance from small businesses.* An applicant for technical assistance must certify that it qualifies as a small business under the appropriate size standard(s) and that it is an independently owned and operated company. An application for technical assistance is available from the Office. The application must be signed under oath by an officer or principal of the applicant. The completed application should be submitted to the Office at the address set forth in § 213.2(a).

(b) *Application for technical assistance from joint applicants, trade associations and unions.* If several businesses jointly or simultaneously from the same industry apply for technical assistance, each business must meet the appropriate SBA size standard(s) and so certify. If a trade association applies for technical assistance, an officer of the trade association must certify that eighty (80) percent of the trade association's members are companies that meet the appropriate size standard(s) and provide a listing of members of the association. If a union applies for technical assistance, an officer of the union must certify that the union has less than ten thousand (10,000) members within the industry for which trade relief is being sought. Applications for trade associations or for unions to request technical assistance are available from the Office. Applications must be signed under oath by an officer of the association or union and completed applications should be submitted to the Office as set forth in § 213.2(a).

(c) *Determination of eligibility and notification of determination.* The Office shall determine whether the applicant is eligible for technical assistance and notify the applicant of the determination within ten (10) days of receipt of a properly completed application. Pursuant to 19 U.S.C. 1339(c)(1), the Office's determination of eligibility is not reviewable by any other agency or by any court.

(d) *Notification to administering agencies.* When an applicant seeks technical assistance on matters involving the trade laws, and the Office determines that the applicant is eligible for technical assistance, the Office shall:

(1) Promptly notify the appropriate administering agency or agencies of the Office's determination that the applicant is eligible to receive technical assistance; and

(2) Consult with the administering agency or agencies as to the provision of technical assistance to that applicant.

§ 213.4 Disclosure of receipt of technical assistance.

An eligible small business that has received technical assistance from the Office must state that it has received technical assistance from the Trade Remedy Assistance Office in any resulting petition, complaint or application which is filed with the Commission or any other agency which administers the trade law under which remedies or benefits are sought.

§ 213.5 Access to Commission resources.

Commission resources, in addition to the Office's resources, are available to an eligible small business to the same extent as those resources are available to members of the general public. No special rights of access to Commission resources shall be accorded to an eligible small business.

§ 213.6 Information concerning assistance.

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

By order of the Commission.

Issued: August 10, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19204 Filed 8-16-89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Maduramicin Ammonium With Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. The application provides for the use of currently approved maduramicin ammonium 1 percent Type A articles and roxarsone 10, 20, 50, or 80 percent Type A articles to make combination drug Type C broiler feeds. The feeds are for the prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: August 17, 1989.

FOR FURTHER INFORMATION CONTACT: James F. McComack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, is the sponsor of NADA 140-821. The NADA provides for combining Cygro™ (maduramicin ammonium) 1 percent Type A articles with 3-Nitro™ (roxarsone) 10, 20, 50, or 80 percent Type A articles to make Type C broiler feeds containing 4.54 to 5.45 grams of maduramicin ammonium and 22.7 to 45.4 grams of roxarsone per ton of feed. The Type C broiler feeds are for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati,* for increased rate of weight gain and for improved feed efficiency. The NADA is approved and 21 CFR 558.340(c) and 558.530(d)(3) are amended to reflect the approval.

Maduramicin ammonium and roxarsone are new animal drugs used in Type A articles to make combination drug Type C feeds. They are Category II drugs which, as provided for in 21 CFR 558.4(e), require an approved form FD-1900 for making a Type C feed from a Type A article as in this NADA as approved and in the regulations in 21 CFR 558.340 as amended.

In accordance with the freedom of information provisions of Part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animals feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.340 is amended by adding new paragraph (c)(4) to read as follows:

§ 558.340 Maduramicin ammonium.

* * * * *

(c) * * *

(4) *Amount.* 4.54 to 5.45 grams per ton (5 to 6 parts per million) with roxarsone 22.7 to 45.4 grams per ton (0.0025 to 0.005 percent).

(i) *Indications for use.* For prevention of coccidiosis caused by *Eimeria ccervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati;* for increased rate of weight gain and improved feed efficiency.

(ii) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Drug overdose or lack of water may result in leg weakness. Withdraw 5 days before slaughter. As sole source of organic arsenic. As roxarsone provided by No. 017210 in § 510.600(c) of this chapter. As maduramicin ammonium provided by No. 010042 in § 510.600(c) of this chapter.

3. Section 558.530 is amended by adding new paragraph (d)(3)(xxiv) to read as follows:

§ 558.530 Roxarsone.

* * * * *

(d) * * *

(3) * * *

(xxiv) Maduramicin ammonium as in § 558.340.

* * * * *

Dated: August 10, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–19305 Filed 8–16–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AC76

Veterans Education; Implementation of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 contains several provisions which affect the administration of dependents' educational assistance and benefits provided under the Vietnam-era GI bill. The most important provisions include a change to the way in which the Department of Veterans Affairs (VA) must measure certain courses which do not lead to a standard college degree; a change in the way the eligibility period is determined for some spouses eligible to receive Dependents' Educational Assistance; and a change to the provision governing receipt of benefits under the Vietnam-era GI bill and other education programs administered by VA. These final regulations will better acquaint the public with the way in which VA intends to administer these provisions of law.

EFFECTIVE DATE: October 28, 1986.

FOR FURTHER INFORMATION CONTACT: Alan Zoeckler (225), Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 7785 through 7794 of the **Federal Register** of February 23, 1989, there was published a notice of intent to amend part 21 in order to implement some provisions of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making these amended regulations final.

VA finds that good cause exists for making these regulations, like the sections of the law they implement, retroactively effective on October 26, 1986. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 21, 1989.

Edward J. Derwinski,

Secretary.

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.1022 paragraph (b) is revised and paragraph (c) is removed to read as follows:

§ 21.1022 Nonduplication—programs administered by the VA.

* * * * *

(b) *Chapter 34 and other programs administered by VA.* An individual may not receive educational assistance allowance under 38 U.S.C. chapter 34 concurrently with benefits under any of the provisions of law listed in this paragraph. If a veteran is eligible for educational assistance under 38 U.S.C. chapter 34 and any of the provisions of law listed in this paragraph, he or she must elect which benefit he or she wishes to receive for the program of

education the veteran wishes to pursue. These provisions of law are:

(Authority: 38 U.S.C. 1781; Pub. L. 99–576)

(1) 38 U.S.C. chapter 31,
(2) 38 U.S.C. chapter 35,
(3) 10 U.S.C. chapter 107,
(4) Section 903 of the Department of Defense Authorization Act, 1981,
(5) The Hostage Relief Act of 1980,
(6) 10 U.S.C. chapter 106, or
(7) 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 1781; Pub. L. 99–576)

2. Section 21.3022 is revised to read as follows:

§ 21.3022 Nonduplication—programs administered by the VA.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. The election is subject to the conditions specified in § 21.4022 of this part. The provisions of law are:

(a) 38 U.S.C. chapter 30,
(b) 38 U.S.C. chapter 31,
(c) 38 U.S.C. chapter 32,
(d) 38 U.S.C. chapter 34,
(e) 10 U.S.C. chapter 106,
(f) 10 U.S.C. chapter 107,
(g) Section 903 of the Department of Defense Authorization Act, 1981, or
(h) The Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 1781; Pub. L. 99–576)

3. Section 21.3046 is revised to read as follows:

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

This section states how VA will compute the beginning date, the ending date and the length of a spouse's or surviving spouse's period of eligibility. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse.

(Authority: 38 U.S.C. 1712(b))

(a) *Beginning date of eligibility period-spouses.* (1) If the permanent total rating is effective before December 1, 1968, the beginning date of the 10-year period of eligibility is December 1, 1968.

(2) The beginning date of eligibility—

(i) Shall be determined as provided in paragraph (a)(2) of this section when—

(A) The permanent total rating is effective after November 30, 1968, or the notification to the veteran of the rating was after that date, and

(B) Eligibility does not arise under § 21.3021(a)(3)(ii) of this part.

(ii) For spouses for whom VA made a final determination of eligibility before October 28, 1986, shall be—

(A) The effective date of the rating, or

(B) The date of notification, whichever is more advantageous to the spouse.

(iii) For spouses for whom VA made a final determination of eligibility after October 27, 1986, shall be—

(A) The effective date of the rating, or

(B) The date of notification, or

(C) Any date between the dates specified in paragraphs (a)(2)(iii) (A) and (B) of this section as chosen by the eligible spouse.

(iv) May not be changed once a spouse has chosen it as provided in paragraph (a)(2)(iii) of this section.

(3) If eligibility arises under § 21.3021(a)(3)(ii) of this part, the beginning date of the 10-year eligibility period is—

(i) December 24, 1970, or

(ii) The date the member of the Armed Forces on whose service eligibility is based was so listed by the Secretary concerned, whichever last occurs.

(Authority: 38 U.S.C. 1701(a); Pub. L. 99–576)

(b) *Beginning date of eligibility period-surviving spouses.* (1) If VA determines before December 1, 1968, that the veteran died of a service-connected disability, the beginning date of the 10-year period is December 1, 1968.

(Authority: 38 U.S.C. 1712)

(2) If the veteran's death occurred before December 1, 1968, but VA does not determine that the veteran died of a service-connected disability until after November 30, 1968, the beginning date of the 10-year period is the date on which VA determines that the veteran died of a service-connected disability.

(3) If the veteran's death occurred before December 1, 1968, while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is December 1, 1968.

(4) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents' educational assistance before October 28, 1986, the beginning date of the 10-year period is—

(i) The date of death of the veteran who dies while a total, service-connected disability evaluated as permanent in nature was in existence, or

(ii) The date on which VA determines that the veteran died of a service-connected disability.

(5) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents' educational assistance after October 27, 1986, the beginning date of the 10-year period is—

(i) The date of death of the veteran who dies while a total, service-connected disability evaluated as permanent in nature was in existence, or

(ii) The date on which VA determines that the veteran died of a service-connected disability, or

(iii) Any date between the dates specified in paragraphs (b)(5)(i) and (b)(5)(ii) of this section as chosen by the surviving spouse.

(6) Once a surviving spouse has chosen a beginning date of eligibility as provided in paragraph (b)(5) of this section, the surviving spouse may not revoke that choice.

(Authority: 38 U.S.C. 1712(b); Pub. L. 99–576)

(c) *Ending date of eligibility period.* (1) The period of eligibility cannot exceed 10 years and can be extended only as provided in paragraphs (d) and (e) of this section.

(2) If eligibility arises before October 24, 1972, educational assistance based on a course of apprentice or other on-job training or correspondence approved under the provisions §§ 21.4256, 21.4261, and 21.4262 of this part will not be afforded later than October 23, 1982, unless the eligible spouse or surviving spouse qualifies for the extended period of eligibility provided in paragraph (d) of this section.

(Authority: 38 U.S.C. 1712)

(d) *Extension to ending date.* (1) The ending date of a spouse's period of eligibility may be extended when the spouse is enrolled and eligibility ceases for one of the following reasons:

(i) The veteran is no longer rated permanently and totally disabled;

(ii) The spouse is divorced from the veteran without fault on the spouse's part; or

(iii) The spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii) of this part.

(2) If the spouse is enrolled in a school operating on a quarter or semester system, VA will extend the period of eligibility to the end of the quarter or semester, regardlesss of whether the spouse has reached the midpoint of the quarter, semester or term.

(3) If the spouse is enrolled in a school not operating on a quarter or semester system, VA will extend the period of eligibility to the earlier of the following:

(i) The end of the course, or

(ii) 12 weeks.

(4) If the spouse is enrolled in a course pursued exclusively by correspondence, VA will extend the period of eligibility to whichever of the following will result in the lesser expenditure:

(i) The end of the course, or

(ii) The total additional amount of instruction that $1,053 will provide.

(Authority: 38 U.S.C. 1711(b))

(5) VA will not extend the period of eligibility when the spouse is pursuing training in a training establishment as defined in § 21.4200(c) of this part.

(6) An extension may not—

(i) Exceed maximum entitlement, or

(ii) Extend beyond the delimiting date specified in paragraph (a) or (e) of this section, as appropriate.

(Authority: 38 U.S.C. 1711(b), 1712(b), 1732, 1786)

(e) *Extended period of eligibility due to physical or mental disability.* A spouse or surviving spouse shall receive an extended period of eligibility when he or she applies for it and meets the criteria of § 21.1043(a) of this part. All other provisions of § 21.1043 of this part concerning commencing dates and length of extended periods of eligibility and discontinuance of educational assistance also apply to spouses and surviving spouses who qualify for extended periods of eligibility.

(Authority: 38 U.S.C. 1712(b))

4. In § 21.4022 paragraph (a) is revised to read as follows:

§ 21.4022 Nonduplication-programs administered by the VA.

(a) *Election.* A veteran or eligible person who is eligible for education or training benefits under more than one of the provisions of law listed in this paragraph based on his or her own service or based on the service of another person cannot receive such benefits concurrently. The individual must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. Except for an election between 38 U.S.C. chapters 32 and 34 which is irrevocable once a check has been negotiated, the person may reelect at any time.

(1) 38 U.S.C. chapter 30,

(2) 38 U.S.C. chapter 31,

(3) 38 U.S.C. chapter 32,

(4) 38 U.S.C. chapter 34,

(5) 38 U.S.C. chapter 35,

(6) 10 U.S.C. chapter 106,

(7) 10 U.S.C. chapter 107,

(8) Section 903 of the Department of Defense Authorization Act, 1981, or

(9) The Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 1781; Pub. L. 99-576)

* * * * *

5. In § 21.4100 paragraph (c) is revised to read as follows:

§ 21.4100 Counseling.

* * * * *

(c) *Provision of counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon the request of the veteran or eligible person. VA shall provide counseling as needed for the purposes identified in § 21.4101 of this part following either the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. VA shall take appropriate steps (including notification where feasible) to acquaint all eligible veterans with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 1663; Pub. L. 99-576)

6. Section 21.4101 is revised to read as follows:

§ 21.4101 Counseling-38 U.S.C. Chapter 34.

(a) *Required counseling.* (1) In any case in which VA has rated the veteran as being incompetent, the veteran must be counseled before selecting a program of education or training. The requirement that counseling be provided is met when—

(i) The veteran has had one or more personal interviews with the counselor;

(ii) The counselor has jointly developed with the veteran recommendations for selecting a program;

(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(b) *Other counseling.* Counseling is not required for veterans and servicepersons receiving benefits under 38 U.S.C. chapter 34 for any purpose other than that described in paragraph (a) of this section.

(Authority: 38 U.S.C. 1663; Pub. L. 99-576)

7. Section 21.4103 is revised to read as follows:

§ 21.4103 Failure to cooperate.

VA will take no further action on the application of a veteran or eligible person for assistance under 38 U.S.C. chapter 34 or chapter 35 when he or she—

(a) Fails to report;

(b) Fails to cooperate in the counseling process; or

(c) Does not complete counseling to the extent required under § 21.4101(a) of this part.

(Authority: 38 U.S.C. 1663; Pub. L. 99-576)

8. In § 21.4104 paragraph (a) is revised to read as follows:

§ 21.4104 Travel expenses.

(a) *General.* VA shall determine and pay the necessary expense of travel to and from the place of counseling for a veteran or eligible person who is required to receive counseling if—

(1) VA determines that the veteran or eligible person is unable to defray the cost based upon his or her annual declaration and certification; or

(2) The individual has a service-connected disability.

(Authority: 38 U.S.C. 111)

* * * * *

9. In § 21.4136 footnote 3 to the table in paragraph (a) and paragraph (i)(2)(ii) are revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

(a) * * * [3]

(Authority: 38 U.S.C. 1788; Pub. L. 99-576)

* * * * *

(i) * * *

(2) * * *

(ii) All hours of the veteran's related training which occurred during the standard workweek and for which the veteran received wages. (See footnote 5 to § 21.4270(c) of this part as to the requirements for full-time training.)

(Authority: 38 U.S.C. 1787(b)(3))

* * * * *

10. In § 21.4137 footnote 1 to the table in paragraph (a) and paragraph (f)(2)(ii) are revised to read as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. Chapter 35.

(a) * * * [1]

(Authority: 38 U.S.C. 1788; Pub. L. 99-576)

* * * * *

(f) * * *

(2) * * *

(ii) All hours of the eligible person's related training which occurred during the standard workweek and for which the eligible person received wages. (See footnote 5 to § 21.4270(c) of this part as

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[3] *See* footnote 5 of § 21.4270(c) of this part for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.

[1] See footnote 5 of § 21.4270(c) of this part for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

to the requirements for full-time training.)

(Authority: 38 U.S.C. 1787(b)(3))

* * * * *

11. In § 21.4138 paragraph (b) and paragraph (f)(2)(i) are revised to read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(b) *Other lump-sum payments.* Such a certification by an institution will be sufficient to release the payment of a lump-sum to or on behalf of the individual for the entire quarter, semester or term not later than the last day of the month following receipt of the certification by VA provided the individual is:

(Authority: 38 U.S.C. 1780(f); Pub. L. 99-576)

* * * * *

(f) * * *

(2) * * *

(i) The Director of the VA field station of jurisdiction may authorize payment to be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation.

(A) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Vocational Rehabilitation and Education Service will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(B) A school which disagrees with a decision made under this paragraph by a Director of a VA field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA field station where the decision was made. The Director, Vocational Rehabilitation and Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Vocational Rehabilitation and Education Service has the authority either to affirm or reverse a decision of the Director of a VA field station.

(Authority: 38 U.S.C. 1780(a))

* * * * *

12. In § 21.4203 paragraphs (a), (b), the introductory text of paragraph (c), the introductory text of paragraph (d), paragraph (d)(1), and paragraph (e) are revised, the introductory text of paragraph (f) is added and paragraph (f)(1)(i), and the introductory text of paragraph (h) are revised to read as follows:

§ 21.4203 Reports—requirements.

(a) *General.* All the reports required by this paragraph shall be in a form specified by the Secretary.

(1) Except as provided in paragraph (a)(2) of this section each educational institution, veteran and eligible person shall report without delay such information on enrollment, entrance, reentrance, change in the hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or eligible person enrolled in an approved course as the Secretary may require and using a form specified by the Secretary. See paragraphs (b) through (h) of this section.

(2) An educational institution may delay in reporting the enrollment or reenrollment of a veteran or an eligible person until the end of the term, quarter, or semester when—

(i) The veteran or eligible person is enrolled in a program of independent study;

(ii) The veteran or eligible person is pursuing the program on a less than half-time basis;

(iii) The educational institution has asked the Director of the VA field station of jurisdiction in writing for permission to delay in making the report; and

(iv) The Director of the VA field station of jurisdiction has determined that it is not feasible for the educational institution to monitor interruption or termination of the veteran's or eligible person's pursuit of the program.

(3) An educational institution which disagrees with a decision of a Director of a VA field station as to whether it may delay reporting enrollments or reenrollments as provided in paragraph (a)(2) of this section may ask to have that decision reviewed by the Director, Vocational Rehabilitation and Education Service. That request must be made in writing to the Director of the VA field station within one year of the date of the letter notifying the educational institution of the original decision.

(4) An educational institution which, under paragraph (a)(2) of this section, is delaying the reporting of the enrollment or reenrollment of a veteran shall provide the veteran with notice of the delay at the time that the veteran enrolls or reenrolls.

(5) In addition, educational institutions must—

(Authority: 38 U.S.C. 1785; Pub. L. 99-576)

(i) Verify enrollment for each veteran and eligible person receiving an advance payment; and

(ii) Verify the delivery of advance payment check and education loan check for each veteran and eligible person receiving an advance payment or loan.

(6) Nothing in this section or in any section in 38 CFR part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(Authority: 38 U.S.C. 1780(d), 1784, 1785, 1798; Pub. L. 95-202, Pub. L. 96-466; Pub. L. 99-576)

(b) *Certifications of enrollment.* All the reports required by this paragraph shall be in a form specified by the Secretary.

(1) VA requires that educational institutions report all entrances and reentrances on a certification of enrollment.

(2) All educational institutions, regardlesss of the way in which they are organized, must clearly specify the course in which the veteran or eligible person is enrolled.

(3) Schools organized on a term, quarter or semester basis—

(i) May report enrollment for the term, quarter, semester, ordinary school year plus the following summer term.

(ii) May not report enrollment for a period that exceeds the ordinary school year plus the following summer term.

(iii) Must report the dates for the break between terms if—

(A) The certification covers two or more terms, and a term ends and the following term does not begin in the same or the next calendar month;

(B) The veteran or eligible person elects not to be paid for the intervals between terms;

(C) The certification covers two or more summer sessions; or

(D) The certification covers at least one summer session and at least one term which is not a standard semester or quarter.

(iv) Must submit a separate enrollment certification for each term, quarter or semester if the student—

(A) Is a veteran or eligible person pursuing a program on a less than half-time basis, or

(B) Is a serviceperson.

(Authority: 38 U.S.C. 1784(a); Pub. L. 99-576)

(v) Where a veteran or an eligible person, who is pursing a course leading to a standard college degree, transfers

between consecutive school terms from one approved institution to another approved institution, for the purpose of enrolling in, and pursuing, a similar course at the second institution, the veteran or eligible person shall, for the purpose of entitlement to the payment of educational assistance allowance be considered to be enrolled at the first institution during the interval, if the interval does not exceed 30 days, following the termination date of the school term of the first institution.

(Authority: 38 U.S.C. 1780)

(c) *Nonpunitive grade.* A school may assign a nonpunitive grade for a course or subject in which the veteran or eligible person is enrolled even though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the school must report the assignment of the nonpunitive grade in a form specified by the Secretary in time for VA to receive it before the earlier of the following dates is reached:

* * * * *

(d) *Interruptions, terminations and changes in hours of credit or attendance.* When a veteran or eligible person interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, this fact must be reported to VA by the school in a form specified by the Secretary.

(1) If the change in status or change in number of hours of credit of attendance occurs on a day other than one indicated by paragraph (d) (2) or (3) of this section, the school will initiate a report of the change in time for the VA to receive it within 30 days of the date on which the change occurs. If the course in which the veteran or eligible person is enrolled does not lead to a standard college degree, and attendance must be certified for the course, the school may include the information on the monthly certification of attendance.

(Authority: 38 U.S.C. 1784(a), 1788(a); Pub. L. 99–576)

* * * * *

(e) *Correspondence courses.* Where the course in which a veteran is enrolled under 38 U.S.C. Chapter 34 or a spouse or surviving spouse is enrolled under 38 U.S.C. Chapter 35 is pursued exclusively by correspondence, the school will report by an endorsement on the veteran's or eligible spouse's or surviving spouse's certification the number of lessons completed by the veteran, spouse or surviving spouse and serviced by the school. Such reports will be submitted quarterly in a form specified by the Secretary.

(Authority: 38 U.S.C. 1780)

(f) *Certification.* All reports required by this paragraph must be in a form specified by the Secretary.

(1) *Courses not leading to a standard college degree.*

(i) Except as provided in this paragraph VA requires that a certification of attendance be submitted monthly for each veteran or eligible person enrolled in a course not leading to a standard college degree. The fact that the course may be pursued on a quarter, semester or term basis will not relieve the veteran or eligible person and the school of this requirement. Unless exempted by this paragraph this requirement also applies to courses measured on a credit-hour basis. This requirement does not apply to—

(A) Courses measured on a credit-hour basis pursuant to footnote 6 of § 21.4270(a),

(B) A course pursued on a less than one-half-time basis,

(C) A course pursued by a serviceperson while on active duty, or

(D) A correspondence course which must meet the requirements of paragraph (e) of this section.

(Authority: 38 U.S.C. 1780(a)(2), 1788(a)(7); Pub. L. 99–576)

* * * * *

(h) *Unsatisfactory progress or conduct.* At times the unsatisfactory progress or conduct of a veteran or eligible person is caused by or results in his or her interruption or termination of training. If this occurs, the interruption or termination shall be reported in accordance with paragraph (d) of this section. If the veteran or eligible person continues in training despite making unsatisfactory progress, the fact of his or her unsatisfactory progress must be reported to VA, if such a report is required, within the time allowed by paragraph (h)(1) and (2) of this section in a form specified by the Secretary.

(Authority: 38 U.S.C. 1674)

* * * * *

13. In § 21.4204, paragraph (a) is revised to read as follows:

§ 21.4204 Periodic certification.

(a) *Reports by schools, veterans and eligible persons.* (1) Except as provided in paragraph (a)(2) of this section VA will require verification of continued enrollment in and pursuit of a course for the entire enrollment period for—

(i) A veteran or eligible person enrolled in a course which leads to a standard college degree; and

(ii) A veteran or eligible person pursuing a course not leading to a standard college degree which qualifies for credit-hour measurement pursuant to § 21.4270(a), footnote 6, of this part.

(2) The provisions of paragraph (a)(1) of this section do not apply to a veteran or eligible person who—

(i) Is on active duty, or

(ii) Is pursuing his or her program of education on a less than half-time basis.

(3) Verification of continued enrollment will be made at least once per year, and in the last month of enrollment if the enrollment period ends more than 3 months after the last verification. In the case of a veteran or eligible person who completed, interrupted or terminated his or her course, any communication from the student or other authorized person notifying VA of the veteran's or eligible person's completion of the course as scheduled or of an earlier termination date, will be accepted to terminate payments accordingly. Reports by other veterans and eligible persons will be submitted in accordance with § 21.4203(e), (f) or (g) of this part.

(Authority: 38 U.S.C. 1780(a)(7), 1780(g); Pub. L. 99–576)

* * * * *

14. In § 21.4230, paragraph (e) is revised to read as follows:

§ 21.4230 Requirements.

* * * * *

(e) *Selection-chapter 35.* VA will approve a program of educational assistance selected by an eligible person if—

(1) It meets the requirements of paragraphs (a) and (b) or (c) of this section, and

(2) The individual is not already qualified for the objective of the program of education.

(Authority: 38 U.S.C. 1721; Pub. L. 99–576)

* * * * *

§ 21.4231 [Removed]

15. Section 21.4231 is removed.

16. In § 21.4232, paragraph (a)(3) is revised to read as follows:

§ 21.4232 Specialized vocational training-38 U.S.C. chapter 35.

(a) * * *

(3) Both the counseling psychologist and the Vocational Rehabilitation Panel will assist in developing the program, if the counseling psychologist has previously determined that the course is in the eligible person's best interest.

(Authority: 38 U.S.C. 1721, 1736; Pub. L. 99–576)

* * * * *

17. In § 21.4233 paragraphs (a)(1) and (b)(1) and (2) are revised, and paragraphs (b)(3) through (b)(5) are added to read as follows:

§21.4233 Combination.

* * * * *

(a) * * *

(1) That the alternate in-school periods of the course are at least as long as the alternate periods in the business or industrial establishment; in determining this relationship between the two components of the course, training received in a business or industrial establishment during a vacation or officially scheduled school break period shall be excluded from the calculation; where the course is approved as continuous part-time work and part-time study in combination, it shall be measured on the basis of the ratio which each portion of the training bears to full time as defined in § 21.4270(c) of this part. The institutional portion must be at least equivalent to one-half time training and must be combined with a job training portion sufficient for the combined training to equal full time.

(Authority: 38 U.S.C. 1682(a)(2) and 1732(b))

(b) * * *

(1) Where the standards for measurement of the courses pursued concurrently in the two schools are different, VA will measure the veteran's or eligible person's enrollment by converting the units of measurement for courses in the second school to the equivalent in value expressed in units of measurement required for the courses in the program of education which the veteran or eligible person is pursuing at the primary institution. This conversion will be accomplished as follows.

(i) If VA measures the course at the primary institution on a credit-hour basis, including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis as provided in § 21.4270(a), footnote 6 of this part, and—

(A) VA measures the course in the second school on a mixed basis as provided in § 21.4270(b) of this part, VA will add to the credit hours the veteran or eligible person is pursuing at the primary institution the credit hours attributable to any course the veteran or eligible person is pursuing at the second school which VA could measure on a credit-hour basis. The clock hours attributable to the other courses pursued at the second school will be converted to credit hours;

(B) VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

(ii) If VA measures the course at the primary institution on a mixed basis as provided in § 21.4270(b) of this part and—

(A) VA measures the course at the second school on a credit-hour basis, the credit hours pursued at the second school will be added to the credit hours the veteran or eligible person is pursuing at the primary institution and the resulting credit hours will be used in making the calculations required by § 21.4270(b) of this part;

(B) VA measures the courses at the second school on a clock-hour basis, the clock hours being pursued at the second school will be added to those pursued at the primary institution before making the calculations required by § 21.4270(b) of this part.

(iii) If VA measures the courses pursued at the primary institution on a clock-hour basis, and

(A) VA measures the courses pursued at the second school on a mixed basis, the courses pursued at the second school which VA can measure on a credit-hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the veteran's or eligible person's training time; or

(B) VA measures the courses pursued at the second school on a credit-hour basis, including courses which qualify for credit-hour measurement on the basis of § 21.4270(a), footnote 6, of this part, VA will convert the credit hours to clock hours to determine the veteran's training time.

(2) If the provisions of paragraph (b)(1) of this section require VA to convert clock hours to credit hours, it will do so by—

(i) Dividing the number of credit hours which VA considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(ii) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(2)(i) of this section. VA will drop all fractional hours.

(3) If the provisions of paragraph (b)(1) of this section require VA to convert credit hours to clock hours, it will do so by—

(i) Dividing the number of clock hours which VA considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(ii) Multiplying each credit hour by the number determined in paragraph (b)(3)(i) of this section. VA will drop all fractional hours.

(4) Where the standards for measurement of the courses pursued concurrently in the two schools are the same, VA will measure the veteran's or eligible person's enrollment by adding together the units of measurement for the courses in the second school to the units of measurement for the courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution. If courses at both schools are measured on a mixed basis so that the provisions of § 21.4270(b) of this part must be applied to the enrollment, VA will separately add the credit hours and the clock hours first, and then apply the provisions of § 21.4270(b) of this part. In applying those provisions, VA will use the standard for full time at the primary institution.

(5) Periodic certifications of training will be required from the veteran and each of the schools where concurrent enrollment is approved in a course which does not lead to a standard college degree and to which the measurement provisions of § 21.4270(a), footnote 6, of this part do not apply. (See §§ 21.4203 and 21.4204.)

(Authority: 38 U.S.C. 1788)

* * * * * * *

18. In § 21.4264 paragraph (c)(2) is revised to read as follows:

§ 21.4264 Farm cooperative courses.

* * * * *

(c) * * *

(2) The time involved in field trips and individual and group instruction, sponsored and conducted by the educational institution offering farm cooperative courses may be counted toward meeting the clock-hour requirements. See § 21.4270(c) of this part for measurement of farm cooperative courses.

(Authority: 38 U.S.C. 1682, 1732)

* * * * *

19. In § 21.4270, the table entitled "Courses" in paragraph (a) is revised; new paragraph (c) is added; the table titled "Courses" in paragraph (b) is moved to the newly added paragraph (c) and the remaining portion of paragraph (b) is revised to read as follows:

§ 21.4270 Measurement of courses.

(a) * * *

COURSES

Kind of school	Kind of course	Full time	¾ time	½ time	Less than ½ time more than ¼ time	¾ time or less
Trade or technical-nonaccredited (includes college courses not leading to a standing and degree.) [1]	Shop practice an integral part of course.[7]	30 clock hours attendance with not more than 2½ hours rest period allowance and not more than 5 hours of supervised study.	22 through 29 clock hours attendance with not more than 2 hours rest period allowance and not more than 3¾ hours of supervised study.	15 through 21 clock hours attendance with not more than 1¾ hours rest period allowance and not more than 2½ hours of supervised study.	8 through 14 clock hours attendance with not more than ¾ hour rest period allowance and not more than ¼ hour of supervised study.	1 through 7 clock hours attendance.
	Theory and class instruction predominates.[2,7]	25 clock hours net instruction and not more than 5 hours of supervised study.	18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study.	12 through 17 clock hours net instruction and not more than 2½ hours of supervised study.	7 through 11 clock hours net instruction and not more than 1¼ hours of supervised study.	1 through 6 clock hours net instruction.
Trade or technical-accredited (includes college courses not leading to a standard degree).[1]	Shop practice an intregal part of course.[3,6,7]	22 clock hours attendance with not more than 2½ hours rest period allowance.	16 through 21 clock hours attendance with not more than 2 hours rest period allowance.	11 through 15 clock hours attendance with not more than 1¼ hours rest period allowance.	6 through 10 clock hours attendance with not more than ¾ hour rest period allowance.	1 through 5 clock hours attendance.
	Theory and class instruction predominates.[2,3,6,7]	18 clock hours net instruction.	13 through 17 clock hours net instruction.	9 through 12 clock hours net instruction.	5 through 8 clock hours net instruction.	1 through 4 clock hours net instruction.
High school nonaccredited.	High school diploma or equivalent.[2,5]	25 clock hours net instruction and not more than 5 hours of supervised study or 4 units per year or equivalent.	18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study or 3 units per year or equivalent.	12 through 17 clock hours net instruction and not more than 2½ hours of supervised study or 2 units per year or equivalent.	7 through 11 clock hours net instruction and not more than 1¼ hours of supervised study or 1 unit per year.	1 through 6 clock hours net instruction.
High school accredited.	High school diploma or equivalent.[2,4]	18 clock hours net instruction or 4 units per year or equivalent.	13 through 17 clock hours net instruction or 3 units per year or equivalent.	9 through 12 clock hours net instruction or 2 units per year or equivalent.	5 through 8 clock hours net instruction or 1 unit per year or equivalent.	1 through 4 clock hours net instruction.
Elementary school nonaccredited.[1]	High school preparatory.[2]	25 clock hours net instruction and not more than 5 hours of supervised study.	18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study.	12 through 17 clock hours net instruction and not more than 2½ hours of supervised study.	7 through 11 clock hours net instruction and not more than ¼ hour of supervised study.	1 through 6 clock hours net instruction.
Elementary school accredited.[1]	.....do[2]	18 clock hours net instruction.	13 through 17 clock hours net instruction.	9 through 12 clock hours net instruction.	5 through 8 clock hours net instruction.	1 through 4 clock hours net instruction.

[1] An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section for an enrollment or reenrollment which begins before May 20, 1988, provided: (1) The academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. An educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis as indicated for collegiate undergraduate courses in paragraph (b) of this section for an enrollment or reenrollment which begins after May 19, 1988, provided: (1) The academic portions of such courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit, (2) the laboratory portions of such courses are measured on a minimum of 2 hours (or two 50-minute periods) of attendance per week for each quarter or semester hour of credit, and (3) the shop portions of such courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall such courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full time courses; 1½ hours for three-quarter-time courses of 16–21 clock hours; 1 hour for one-half-time courses of 11–15 clock hours; or ½ hour for less than half-time courses of 6–10 clock hours; no rest period shall be allowed for courses of less than 6 clock hours of attendance.

(Authority: 38 U.S.C. 1788; Pub. L. 100-322)

[2] In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops, in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

[3] Supervised study must be excluded.

[4] Diploma course or equivalent based on completion of 16 instruction units. If student is pursuing a course at a rate which would result in an accredited academic high school diploma at the end of 4 ordinary school years, he or she is considered in full-time training. High school diploma courses or equivalent available only for Chapters 32 and 34 and eligible spouses and surviving spouses under Chapter 25.

[5] Diploma course or equivalent based on completion of 16 instruction units. High school diploma courses or equivalent are available only for Chapters 32 and 34 and eligible spouses and surviving spouses under Chapter 35.

[6] VA will measure the veteran's or eligible person's enrollment in a course not leading to a standard college degree on a credit hour basis whenever all the conditions listed in this footnote are met. The veteran or eligible person is enrolled in a course which is offered during the school year by a fully accredited institution of higher learning in residence on a standard quarter or semester hour basis, and the course is approved pursuant to 38 U.S.C. 1775. A majority of the total credits required for the course is derived from unit courses or subjects offered by that institution of higher learning as part of the course, approved pursuant to 38 U.S.C. 1775, leading to a single standard college degree. When all of the conditions of this footnote are met the VA will measure the veteran's or eligible person's enrollment in the same manner as collegiate undergraduate courses are measured in paragraph (c) of this section (including footnote 2 to that paragraph). VA will apply the provisions of § 21.4272(e) of this part and measure these courses as though they were undergraduate courses using the "normal method," when appropriate. VA will apply the provisions of § 21.4272(f) of this part if one or more of the veteran's or eligible person's courses have insufficient standard class sessions; and VA will apply § 21.4272(g) of this part if one or more of the veteran's or eligible person's courses are offered during a nonstandard term.

(Authority: 38 U.S.C. 1788(a)(7); Pub. L. 99-576)

[7] VA will measure the veteran's or eligible person's enrollment as provided in paragraph (b) of this section when the provisions of that paragraph are met.

(Authority: 38 U.S.C. 1788(e); Pub. L. 99-576)

(b) *Mixed credit-hour and clock-hour measurement.* (1) When a course not leading to a standard college degree in which the veteran or eligible person is enrolled cannot qualify for credit-hour measurement under either footnote 1 or footnote 6 of paragraph (a) of this section, VA will measure the course on a combined clock-hour and credit-hour basis when the provisions of this paragraph are met.

(i) The course in which the veteran or eligible person is enrolled—

(A) Is offered by an institution of higher learning, and

(B) Does not lead to a standard college degree; and

(ii) The institution of higher learning requires as part of the reservist's program of education one or more unit subjects for which credit is granted toward a standard college degree; and

(2) VA will apply—

(i) The provisions of paragraph (c) of this section and the provisions § 21.4272 (e), (f) and (g) of this part, where appropriate, to the portion of the veteran's or eligible person's enrollment consisting of the unit subject or subjects described in paragraph (b)(1)(ii) of this section measured on a credit-hour basis, and

(ii) The provisions of paragraph (a) of this section to the portion of the veteran's or eligible person's enrollment which is being measured on a clock-hour basis.

(3) For a veteran or eligible person enrolled in a school where 12 credit hours are normally full-time, and where the courses which must be measured on a clock-hour basis would normally require 18 clock hours net instruction because the course is accredited and theory and class instruction predominate as provided in paragraph (f)(2) of this section, VA will measure enrollment as provided in the following table. Clock hours in the table include customary intervals not to exceed 10 minutes between classes. Shop practices and rest periods are excluded. Supervised instruction periods in schools' shops and the time involved in field trips and individual and group instruction may be included in computing the clock-hour requirements. Credit hours in this table refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which meets the definition of § 21.4200(b) of this part, before using the table VA will convert the credit hours being pursued by the veteran or eligible person to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the veteran or eligible person is enrolled, VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part.

Credit hour enrollment	Required clock hours for each training time				
	Full time	3/4 time	1/2 time	Less than 1/2 but more than 1/4 time	1/4 time
1 credit hour	16 or more clock hours net instruction.	11 to 15 clock hours net instruction.	7 to 10 clock hours net instruction.	3 to 6 clock hours net instruction.	0 to 2 clock hours net instruction.
2 credit hours	15 or more clock hours net instruction.	10 to 14 clock hours net instruction.	6 to 9 clock hours net instruction.	2 to 5 clock hours net instruction.	0 to 1 clock hours net instruction.
3 credit hours	13 or more clock hours net instruction.	9 to 12 clock hours net instruction.	4 to 8 clock hours net instruction.	1 to 3 clock hours net instruction.	0 clock hours.
4 credit hours	12 or more clock hours net instruction.	7 to 11 clock hours net instruction.	3 to 6 clock hours net instruction.	0 to 2 clock hours net instruction.	[1]
5 credit hours	10 or more clock hours net instruction.	6 to 9 clock hours net instruction.	1 to 5 clock hours net instruction.	0 clock hours	[1]
6 credit hours	9 or more clock hours net instruction.	4 to 8 clock hours net instruction.	0 to 3 clock hours net instruction.	[1]	[1]
7 credit hours	7 or more clock hours net instruction.	3 to 6 clock hours net instruction.	0 to 2 clock hours net instruction.	[1]	[1]
8 credit hours	6 or more clock hours net instruction.	1 to 5 clock hours net instruction.	0 clock hours	[1]	[1]
9 credit hours	4 or more clock hours net instruction.	0 to 3 clock hours net instruction.	[1]	[1]	[1]
10 credit hours	3 or more clock hours net instruction.	0 to 2 clock hours net instruction.	[1]	[1]	[1]
11 credit hours	1 or more clock hours net instruction.	0 clock hours	[1]	[1]	[1]

[1] Not applicable.

(4) For a veteran or eligible person enrolled in a school where 12 credit hours are normally full-time, and where the courses which must be measured on a clock-hour basis would normally require 22 clock hours net instruction because the course is accredited and shop practice predominates, VA will measure enrollment as provided in the following table. Supervised study is excluded from the clock hours included in this table. Credit hours in this table refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which meets the definition of § 21.4200(b) of this part, before using the table, VA will convert the credit hours being pursued by the veteran of eligible person to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the veteran or eligible person is enrolled, VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part.

Credit hour enrollment	Required clock hours for each training time				
	Full time	¾ time	½ time	Less than ½ but more than ¼ time	¼ time
1 credit hour	20 or more clock hours attendance with not more than 2¼ hours rest period allowance.	14 to 19 clock hours attendance with not more than 1½ hours rest period allowance.	9 to 13 clock hours attendance with not more than 1 hour rest period allowance.	4 to 8 clock hours attendance with not more than ½ hour rest period allowance.	0 to 3 clock hours attendance
2 credit hour	18 or more clock hours attendance with not more than 2 hours rest period allowance.	12 to 17 clock hours attendance with not more than 1½ hours rest period allowance.	7 to 11 clock hours attendance with not more than ¾ hour rest period allowance.	3 to 6 clock hours attendance with not more than ¼ hour rest period allowance.	0 to 2 clock hours attendance instruction
3 credit hour	16 or more clock hours attendance with not more than 1¾ hours rest period allowance.	11 to 15 clock hours attendance with not more than 1½ hours rest period allowance.	5 to 10 clock hours attendance with not more than ¾ hour rest period allowance.	1 to 4 clock hours attendance with not more than ¼ hour rest period allowance.	0 clock hours
4 credit hour	15 or more clock hours attendance with not more than 1¾ hours rest period allowance.	9 to 14 clock hours attendance with not more than 1¼ hours rest period allowance.	4 to 8 clock hours attendance with not more than ½ hour rest period allowance.	0 to 3 clock hours attendance.	(1)
5 credit hour	13 or more clock hours attendance with not more than 1½ hours rest period allowance.	7 to 12 clock hours attendance with not more than 1 hour rest period allowance.	2 to 6 clock hours attendance with not more than ¼ hour rest period allowance.	0 to 1 clock hour attendance.	(1)
6 credit hour	11 or more clock hours attendance with not more than 1¼ hours rest period allowance.	5 to 10 clock hours attendance with not more than ¾ hour rest period allowance.	0 to 4 clock hours attendance.	(1)	(1)
7 credit hour	9 or more clock hours attendance with not more than 1 hour rest period allowance.	3 to 8 clock hours attendance with not more than ½ hour rest period allowance.	0 to 2 clock hours attendance.	(1)	(1)
8 credit hour	7 or more clock hours attendance with not more than ¾ hour rest period allowance.	2 to 6 clock hours attendance with not more than ¼ hour rest period allowance.	0 to 1 clock hours attendance.	(1)	(1)
9 credit hour	5 or more clock hours attendance with not more than ½ hour rest period allowance.	0 to 4 clock hours attendance.	(1)	(1)	(1)
10 credit hour	4 or more clock hours attendance with not more than ½ hour rest period allowance.	0 to 3 clock hours attendance.	(1)	(1)	(1)
11 credit hour	2 or more clock hours attendance with not more than ¼ hour rest period allowance.	0 to 1 clock hours attendance.	(1)		(1)

[1] Not applicable.

(5) VA will measure an enrollment as provided in this paragraph when the provisions of paragraph (b)(1) of this section apply to the enrollment, but neither the provisions of paragraph (b)(3) nor (4) apply. This may occur when either the courses which must be measured on a clock-hour basis normally require neither 18 clock hours attendance nor 22 clock hours net instruction, or 12 credit hours are not normally full-time at the school, or both. Credit hours in this paragraph refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which is defined in § 21.4200(b) of this part, before using the procedure in this paragraph VA will convert the credit hours being pursued by the veteran or eligible person to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the veteran or eligible person is enrolled, VA will use the class sessions as a basis for measurement as decribed in § 21.4272(f)(2) of this part. VA will—

(i) Divide the number of credit hours in which the veteran or eligible person is enrolled by the number of credit hours normally considered full time at the school;

(ii) Multiply the percentage determined in paragraph (b)(5)(i) of this section by the number of clock hours of attendance or net instruction, as appropriate, which paragraph (a) of this section requires for each training time;

(iii) Subtract the result determined in paragraph (b)(5)(ii) of this section from the minimum number of clock hours of attendance or net instruction, as appropriate, which paragraph (a) of this section requires for each training time (rounding to the nearest clock hour and dropping fractions of one-half hour to the next lower clock hour).

(iv) Multiply the length of time (if any) provided in paragraph (a) of this section for a rest period allowance by the percentage determined in paragraph (b)(5)(i) of this section;

(v) Subtract the length of time determined in paragraph (b)(5)(iv) of this section from the length of time determined in paragraph (f) of this section for a rest period allowance (rounding to the nearest quarter-hour and dropping fractions of 7½ minutes to the next lower quarter-hour); and

(vi) Measure the enrollment on the basis of the greatest training time permitted by the number of clock hours in which the veteran or eligible person is enrolled and the length of his or her rest period allowance.

(Authority: 38 U.S.C. 1788(e); Pub. L. 99-576)

(c) *Collegiate graduate, professional and on-the-job training courses.* Collegiate graduate, professional and on-the-job training courses shall be

measured as stated in this table. This shall be used for measurement of collegiate undergraduate courses subject to all the measurement criteria of § 21.4272. Clock hours and sessions mentioned in this table mean clock hours and class sessions per week.

(Authority: 38 U.S.C. 1682, 1732, 1777, 1787, 1788)

20. In § 21.4271 paragraphs (a) and (b) are revised to read as follows:

§ 21.4271 Trade or technical—high schools.

(a) *Shop practice predominates.* Except as provided in § 21.4270(a), footnotes 1, 6 and 7 of this part, trade or technical courses which include shop practice as an integral part of the course, will be measured on a basis of clock hours of attendance per week. This includes such courses under the supervision of a college or university where credit is not given towards a standard college degree.

(Authority: 38 U.S.C. 1788(a), 1788(e); Pub. L. 99-576)

(b) *Theoretical or classroom instruction predominates.* Except as provided in § 21.4270(a), footnotes 1, 6 and 7 of this part, a technical course in which theoretical or classroom instruction constitutes more than 50 percent of the required hours per week, will be measured on the basis of clock hours of net instruction per week. This includes such courses given by a college or university for which credit is not granted towards a standard college degree.

(Authority: 38 U.S.C. 1788(a), 1788(e); Pub. L. 99-576)

* * * * *

21. In § 21.4272, paragraph (c) is removed and reserved, paragraphs (d), (e), (f)(2)(i), (f)(3)(iii), (g)(3), (i)(1)(i), and (i)(1)(iii) are revised to read as follows:

§ 21.4272 Collegiate course measurement.

* * * * *

(d) *Course measurement general.* When an undergraduate course qualifies for credit-hour measurement, VA will measure it according to the table contained in § 21.4270(c) of this part.

(Authority: 38 U.S.C. 1788(a); Pub. L. 99-576)

(e) *Course measurement normal method.* VA will use the table in § 21.4270(c) of this part for measurement of a collegiate undergraduate course without adjusting the credit hours assigned by a school when the course is one of the following.

* * * * *

(f) *Course measurement; insufficient standard class sessions.*

* * * * *

(2) * * *

(i) VA will determine training time for those weeks by using the table in § 21.4270(c) of this part without adjustment when the published accrediting standards of the accrediting agency that accredits the course or the educational institution offering the course permit a class session which is somewhat shorter than that stated in § 21.4200(g) of this part while requiring an overall level of educational pursuit that approximates the level required by courses offered on a standard quarter- or semester-basis.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

* * * * *

(3) * * *

(iii) Considering the standard class sessions to be the same as credit hours for the purpose of using the table in § 21.4270(c) of this part to determine training time for the week.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

* * * * *

(g) * * *

(3) The quotient resulting from the use of the formula is called equivalent credit hours. VA treats equivalent credit hours as credit hours for measurement purposes. If there is at least one regularly scheduled standard class session per equivalent credit hour each week, VA will use the number of equivalent credit hours to compute educational assistance allowance using the criteria of § 21.4270(c) of this part of the criteria of footnote 2 of that paragraph, whichever is appropriate. If a week contains less than one standard class session per equivalent credit hour, VA will determine training time according to the provisions of paragraph (f)(2) of this section.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

* * * * *

(i) * * *

(1) * * *

(i) If the independent study credit hours the veteran or eligible person is pursuing would equal half time or more, according to the table in § 21.4270(c) of this part, VA shall convert them to the highest number of hours considered to be less than half time training. If the independent study is not measured on a credit-hour basis, VA will assign a credit-hour evaluation to independent study based on the highest number of credit hours considered to be less than half-time training.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

* * * * *

(iii) VA will use the total hours computed in paragraph (i)(1)(i) of this section to determine the training time based upon the measurement criteria found in § 21.4270(c) of this part.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

22. In § 21.4275 paragraph (a) is revised to read as follows:

§ 21.4275 Practical training course; measurement.

(a) *Medical and dental residencies and osteopathic internships and residencies.* VA will measure medical and dental residencies, and osteopathic internships and residencies as provided in § 21.4270(c) of this part if they are accredited and approved in accordance with § 21.4265(a) of this part.

(Authority: 38 U.S.C. 1788(b); Pub. L. 99-576)

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3629-7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final Rulemaking.

SUMMARY: On April 19, 1988 (53 FR 12896), the USEPA published a Notice of Final Rulemaking (NFR) approving Indiana's State Implementation Plan (SIP) for lead, which included the Hammond Lead Products, Incorporated (Hammond Lead), lead plant in Hammond, Indiana. USEPA's approval was based on the stipulation that Indiana and Hammond Lead further investigate fugitive emissions, and, if necessary, develop and submit to USEPA a revised control strategy for these emissions.

On March 29, 1989 (53 FR 12927), USEPA published in the **Federal Register** a notice proposing approval of a site-specific SIP revision to the Indiana lead plan which pertains to Hammond Lead Products, Inc.

During the public comment period, USEPA received one comment from a lead source. USEPA has reviewed the comment and determined the Hammond Lead portion of the Indiana lead plan is approvable.

EFFECTIVE DATE: This final rulemaking becomes effective on September 18, 1989.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 353–3849 before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

A copy of today's revision to the Indiana SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC. 20460.

SUPPLEMENTARY INFORMATION: On April 19, 1988 (53 FR 12896), USEPA approved most of Indiana's SIP for lead, including 326 IAC 15–1, which contained a plan for Hammond Lead's lead plant. This plan contains the stipulation that Indiana and Hammond Lead would further investigate fugitive emissions at the lead plant, and, if necessary, develop and submit to USEPA a revised control strategy for these sources.

In response to this requirement, on June 9, 1987, Hammond Lead committed to Indiana to perform certain analyses and make certain changes to its facility. Indiana reviewed the changes needed, and incorporated them into a revised regulation, 326 IAC 15–1–2(a)(6), which it submitted to USEPA for "parallel processing," on January 18, 1989, along with dispersion modeling.

The revised rule reads as follows:

Source	Facility description	Emission Limitation lbs./hr.
(6) Hammond Lead Products, Inc. HLP-Lead Plant.	Stack No. (1–S–54).	0.09
	Stack No. (4A–S–8).	.09
	Stack No. (14–S–16).	.09
	Stack No. (1–S–2)	.09
	Stack No. (1–S–26).	.09
	Stack No. (16–S–56).	.13
	Stack No. (1–S–52).	.18
	Stack No. (1–S–27).	.09
	Stack No. (4–S–35).	.09
	Stack No. (6–S–33).	.09
	Stack No. (4B–S–34).	.09
	Stack No. (6–S–47).	.05
	Ventilator Control System—North Building (Stack Nos. N–V–1, N–V–2, N–V–3, N–V–4, and N–V–5).	[1].002
	—South Building (Stack Nos. S–V–1, S–V–2, S–V–3, S–V–4, and S–V–5).	[1].002
	—Vent 11	.006

[1] Each.

(A) Compliance with the above emission limitations shall be achieved upon the effective date of this rule except for the limitations for Stack No. 1–S–52 and the Ventilator Control Systems.

(B) Hammond Lead Products shall submit a plan and schedule by June 30, 1989, for installation of the Ventilator Control Systems. The plans shall include the engineering design for each Ventilator Control System and shall identify the necessary steps to accomplish each phase of the Ventilator Control System construction. The schedule for installation of each Ventilator Control System shall be as expeditious as practicable and shall provide that the final installation for all Ventilator Control Systems shall be achieved no later than July 31, 1990. Each Ventilator Control System shall consist of a fan with a constant flow rate that draws air from the building through a [High Efficiency Particulate Air] HEPA filter which vents to the atmosphere through a stack. The HEPA filters shall be maintained and operated in order to achieve maximum control efficiency. In addition to the requirements contained in subsection (c) of this section, Hammond Lead Products shall submit an operation and maintenance plan by July 31, 1990, which incorporates good housekeeping practices for the Ventilator Control Systems. This operation and maintenance plan shall be incorporated into the operating permits for Hammond Lead Products and submitted to USEPA as a revision to Indiana's lead State Implementation Plan by December 31, 1990. The Ventilator Control Systems shall be designed such that process fugitive emissions will not routinely escape the buildings except as vented through the Ventilator Control Systems. The compliance test method specified in section 4(a) of this rule shall be used to determine compliance with the emission limitations for the Ventilator Control System stacks.

(C) The emission limitation in this subdivision for the Stack No. 1–S–52 shall be achieved by December 31, 1989. Until December 31, 1989, lead emissions from processes vented through the existing Main Dracco (Stack No. 1–S–1) shall not exceed 0.56 pounds per hour.

(D) By December 31, 1989, the stack heights for all processes except Stack No. 16–S–56, Stack No. 1–S–52 and the Ventilator Control Systems shall be no less than 60 feet above grade; the stack heights for Stack No. 16–S–56 and Stack No. 1–S–52 shall be no less than 82 feet above grade; and the stack height for Vent 11 shall be no less than 35 feet above grade. By July 31, 1990, the stack heights for the other Ventilator Control Systems shall be no less than 60 feet above grade.

(E) By July 31, 1990, Hammond Lead shall submit to the department a schedule for installation of HEPA filters at:

Stack No. 1–S–54
Stack No. 4A–S–8
Stack No. 14–S–16
Stack No. 1–S–2
Stack No. 1–S–26
Stack No. 16–S–56
Stack No. 1–S–52
Stack No. 1–S–27
Stack No. 4–S–35
Stack No. 6–S–33
Stack No. 4B–S–34
Stack No. 6–S–47

and a revised set of emission limitations for each stack identified in this clause. The schedule shall specify a date for installation of each HEPA filter such that installation at four stacks is complete by December 31, 1990; installation at eight stacks is complete by December 31, 1991; and installation for all stacks is complete by December 31, 1992. The revised emission limitation for each process shall not exceed the limitation specified in this subdivision for such process, unless accompanied by a demonstration using procedures acceptable to the commissioner that the lead air quality standard will be attained and maintained. If any one revised emission limitation exceeds the limitation specified in this subdivision, the revised limitation will be submitted to USEPA as a revision to the lead State Implementation Plan. The sum of all the revised emission limitations shall not exceed 0.912 pounds per hour. Compliance with the revised set of emission limitations shall be achieved by December 31, 1992.

On March 29, 1989 (54 FR 12927), USEPA published a notice of proposed rulemaking proposing to approve this revised plan.

USEPA received only one comment on the notice, from Hammond Lead.

1. *Comment:* Each stack of the ventilator control system on the North building (N–V–1 thru N–V–5) and the South building (S–V–1 thru S–V–5) has an allowable emission rate of 0.002 lb/hr. per stack. The column in the **Federal Register** notice containing the various emission limits should reflect that the limit is per stack, not per building.

Response: The emission limit of 0.002 lb/hr for the North and South building is for each stack. The **Federal Register** notice was in error.

2. *Comment:* The emission limit of vent 11 is 0.006 lb/hr. The entry in the emission column on page 12928 of the **Federal Register** notice would appear to assign emission limits of 0.006 lb./hr to S–V–2, S–V–3, S–V–4 and S–V–5 which is not the case. The emission limit for each of these stacks is 0.002 lb./hr.

Response: The **Federal Register** notice was in error. It should have indicated that the emission limit of vent 11 is 0.006 lb/hr and the emission limit for each of the stacks (S–V–2, S–V–3, S–V–4, and S–V–5) is 0.002 lb/hr.

3. *Comment:* Paragraph (D) on page 12928 of the **Federal Register** notice identifies Vent 11 as Vent II due to a typing error.

Response: The **Federal Register** notice was in error as the comment indicates.

4. *Comment:* Part of the third sentence in paragraph (E) on page 12928 of the **Federal Register** notice is missing. The sentence should read: "The revised emission limitation for each process shall not exceed the limitation specified in this subdivision for such process, unless accompanied by a demonstration using procedures acceptable to the Commissioner that the lead air quality standard will be attained and maintained."

Response: The missing paragraph was inadvertently omitted.

Conclusion

USEPA has reviewed Rule 326 IAC–15–1–2(a)(6) and has determined that the revised lead emission limits which pertain to Hammond Lead Products' lead plant are adequate to demonstrate attainment and maintenance of the lead NAAQS. The modeling demonstration submitted by the State to USEPA, based on the review emission limitations and the proposed control strategy showed that the total maximum predicted quarterly average lead concentration is 1.495 $\mu g/m^3$. The value demonstrates attainment of the ambient lead standard (1.50 $\mu g/m^3$).

On April 5, 1989, the Indiana Air Pollution Control Board adopted a revised 326 IAC 15–1, Lead Emission Limitations, which includes (1) revised requirements for the HLP-Lead Plant, (2) corrections of minor typographical errors in Indiana's earlier rule, and (3) minor, non-substantive wording changes. The State promulgated this rule on June 14, 1989, and submitted it to USEPA as a revision to its lead plan on June 23, 1989. This revised 326 IAC 15–1 was published in the Indiana Register on July 1, 1989. Today, USEPA is approving the rule, as published on July 1, 1989.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Lead.

Note: Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 3, 1989.

William K. Reilly,

Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding new paragraph (c)(78) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(78) On January 18, 1989, and June 23, 1989, Indiana submitted its revised lead plan for the HLP-Lead Plant of Hammond Lead Products, Inc. in Hammond Indiana. Additionally, minor changes were made to Indiana's overall lead rule, 326 IAC 15–1, Lead Emission Limitations.

(i) Incorporation by reference.

(A) Title 326—Air Pollution Control Board—Indiana Administrative Code (326 IAC) 15–1, as published in the Indiana Register (IR) on July 1, 1989, at 1850. This rule was effective for State purposes on July 14, 1989.

* * * * *

§ 52.797 [Amended]

(3) Section 52.797 is amended by removing and reserving paragraph (b).

[FR Doc. 89–19292 Filed 8–16–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6963]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively

infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[Amended]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1987, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Orange	Unincorporated areas	Aug. 17, 1989 and Aug. 24, 1989, "The Orlando Sentinel".	Hon. Thomas Dorman, Chairman, County Board of Commissioners, P.O. Box 1393, Orlando, Florida 32802.	Aug. 7, 1989	120179
Illinois: Cook and Lake	Village of Buffalo Grove	Apr. 13, 1989 and Apr. 20, 1989, "The Daily Herald".	Hon. William R. Balling, Village Manager, Village of Buffalo Grove, 51 Raupp Boulevard, Buffalo Grove, Illinois 60090.	Apr. 4, 1989	170068
Michigan:					
Berrien	Township of Coloma	July 19, 1989 and July 26, 1989, "Tri-City Record".	Hon. Rodney Krieger, Supervisor, Township of Coloma, 4919 Paw Paw Lake Road, Coloma, Michigan 49038.	July 10, 1989	260034
Berrien	Township of Watervliet	July 19, 1989 and July 26, 1989, "Tri-City Record".	Hon. Merle Bujack, Supervisor, Township of Watervliet, P.O. Box 384, Watervliet, Michigan 49098.	July 10, 1989	260048
Missouri: St. Louis	City of Bellefontaine Neighbors.	Aug. 4, 1989 and Aug. 11, 1989, "Suburban Journal".	Hon. Joseph Berger, Mayor, City of Bellefontaine Neighbors, City Hall, 9641 Bellefontaine Road, Bellefontaine Neighbors, Missouri 63137.	July 24, 1989	290330
North Carolina: Wake	Town of Knightdale	July 27, 1989 and Aug. 3, 1989 "Gold Leaf Farmer".	Hon. W.A. Wilder, Jr., Mayor, Town of Knightdale, 207 Main Street, P.O. Box 640, Knightdale, North Carolina 27545.	July 17, 1989	370241
Texas: Matagorda	Unincorporated areas	July 31, 1989 and Aug. 7, 1989, "The Daily Tribune".	Hon. Burt O'Connell, Matagorda County Judge, P.O. Box 1331, Bay City, Texas 77414–1331.	July 18, 1989	485489

Issued: August 10, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–19348 Filed 8–16–89; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency

Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
COLORADO	
Commerce City (city), Adams County (FEMA Docket No. 6952)	
South Platte River:	
At Franklin Street (Southern Corporate Limits)	*5141
At Burlington Ditch Diversion	*5137
Approximately 50 feet upstream of York Street	*5128
At Chicago Rock Island and Pacific Railroad	*5125
At Interstate Highway 270	*5114
Approximately 760 feet downstream of I-270	*5113
At East 70th Avenue (Northern Corporate Limits)	*5106
Maps are available for review at the Department of Community Development, 5291 East 60th Avenue, Commerce City, Colorado.	
Durango (city), La Plata County (FEMA Docket No. 6955)	
Animas River:	
Approximately 3,050 feet downstream of U.S. Highway 160 (New Bridge)	*6,463
Approximately 1,320 feet downstream of U.S. Highway 160 (New Bridge)	*6,473
Approximately 690 feet downstream of U.S. Highway 160 (New Bridge)	*6,482
Just downstream of U.S. Highway 160 (New Bridge)	*6,483
Approximately 1,900 feet upstream of U.S. Highway 160 (New Bridge)	*6,490
Maps are available for review at the Community Development Department, 949 Second Avenue, Durango, Colorado.	
KENTUCKY	
Coal Run (village), Pike County (FEMA Docket No. 6957)	
Levisa Fork:	
About 1.2 miles downstream of CSX railroad	*670
About 400 feet upstream of CSX railroad	*671
Maps available for inspection at the Village Clerk's Office, 339 Main Street, Pikeville, Kentucky.	
NEW JERSEY	
Bordentown (township), Burlington County (FEMA Docket No. 6955)	
Delaware River:	
At confluence of Crosswicks Creek	*15
At downstream corporate limits	*13
Crosswicks Creek:	
At U.S. Route 130	*16
At confluence of Blacks Creek	*15
Blacks Creek:	
Approximately 600 feet downstream of U.S. Route 206	*15
At confluence of Crosswicks Creek	*15
Maps available at the Township Building, Municipal Drive, Bordentown, New Jersey.	
Trenton (city), Mercer County (FEMA Docket No. 6955)	
Delaware River:	
Approximately 400 feet downstream of CONRAIL Bridge	*21
Downstream corporate limits	*18
Maps available for inspection at the City Hall, 319 East State Street, Trenton, New Jersey.	
WEST VIRGINIA	
Huntington (City), Cabell and Wayne Counties (FEMA Docket No. 6952)	
Ohio River:	
At downstream corporate limits	*552
Maps available for inspection at the City Hall, 800 5th Avenue, Huntington, West Virginia.	

Issued: August 10, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–19347 Filed 8–16–89; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, and 25

[General Docket No. 84–1234, RM–4247; FCC 89–181]

Allocation Spectrum for, and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Mobile Satellite Service for the Provision of Various Common Carrier Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; Petition for reconsideration.

SUMMARY: The Commission released a Report and Order (R&O) on September 26, 1986 (51 FR 37398, October 22, 1986), allocating 27 MHz in the L-band for the mobile-satellite service (MSS) to be shared with the aeronautical mobile-satellite (R) service (AMSS(R)). An additional 1 MHz of spectrum was left available exclusively for AMSS(R). Eight petitions for reconsideration of the R&O were filed concerning the L-band allocation to MSS and AMSS(R). In response the Commission affirmed its L-band allocation and denied the petitions for reconsideration on November 9, 1987 (52 FR 44985, November 24, 1987). Later in 1987 a World Administrative Radio Conference (Mobile WARC) convened and adopted an L-band allocation different from our domestic MSS L-band allocation. The Aviation Parties have petitioned the Commission for further reconsideration of our L-band allocations decision requesting that we conform the U.S. MSS allocation to the Mobile WARC L-band allocation. The American Mobile Satellite Corporation (AMSC) has filed an Opposition to the Petition for further Reconsideration requesting that we affirm our earlier L-band allocation decision. Reply comments were also submitted by the Aviation Parties. Also, a comment was filed by GTE Airfone, Inc. The intent of this action is to affirm our L-band allocation and to deny the Petition for Reconsideration.

EFFECTIVE DATE: May 31, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Raymond LaForge, telephone (202) 653–8117.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O), Adopted: May 31, 1989, Released: August 4, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 233), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice

1. The Commission released an R&O on September 26, 1986 allocating 27 MHz in the L-band for MSS to be shared with AMSS(R) and left 1 MHz of spectrum available exclusively for AMSS(R). Thus, the Commission allocated two 4.5 MHz band segments (1545.0–1549.5/1646–1651.0 MHz) for AMSS(R) on a primary basis with MSS permitted on a secondary basis; two 9 MHz segments for co-primary shared use by AMSS(R) and MSS (1549.5–1558.5/1651.0–1660.0 MHz) with a footnote indicating that AMSS(R) will have priority access over MSS use; and two 0.5 MHz segments (1558.5–1559.0/1660.0–1660.5 MHz) available for AMSS(R) on a primary basis were left unchanged. The Aviation Parties petitioned the Commission for reconsideration and the Commission released a Memorandum Opinion and Order (MO&O) on November 9, 1987 denying the petition and affirming the U.S. MSS L-band allocation. However, a Mobile WARC convened in September-October 1987 and allocated the L-band into separate blocks for maritime, aeronautical, and land mobile-satellite services. Thus, the international allocations for L-band differ from our domestic L-band allocations. The U.S. took a reservation to the Mobile WARC L-band allocation. As a result the Aviation Parties have filed a Petition for Reconsideration requesting that we conform our U.S. MSS L-band allocation to that adopted internationally at the Mobile WARC.

2. The Aviation Parties generally argue that our reservation to the 1987 Mobile WARC did not provide the legal or policy justification necessary to implement our U.S. MSS L-band allocations. The Aviation Parties claim that at the very least we were bound by the earlier 1989 Mobile WARC allocation decision which resulted in the entire 28 MHz being made available to the U.S. for aeronautical safety communications. Further, the Aviation Parties believe that the U.S. allocation will result in harmful interference to other international AMSS(R) systems and that the domestic L-band allocation can not be readily coordinated. AMSC contends that the U.S. can implement its domestic allocation on a non-conforming basis and that the generic U.S. MSS system will not cause harmful interference to dedicated AMSS(R) systems. AMSC believes that coordination with other satellite systems can be readily achieved.

3. We continue to believe that our domestic L-band allocations adopted in this proceeding will best serve the public interest. We believe that a multitude of technical and operational factors are available for avoiding mutual interference and that the U.S. MMS L-band allocation can be implemented successfully within the existing agreement. While the international allocation divides the various services into blocks of spectrum, our domestic allocation is a dynamic approach wherein spectrum is shared by the two services and thus, the U.S. MSS system can be responsive to the actual demands of these services as they develop. In our view, the U.S. allocation provides a more efficient means of balancing the needs of the AMSS(R) and MSS. In fact, we believe that the flexibility of our domestic alocation will enhance our ability to coordinate the L-band spectrum internationally.

4. The Aviation Parties also contend that the R&O excluded aircraft public correspondence (APC) from the AMSS(R) without adequate notice and comment and they maintain that the Commission's interpretation that APC is not permitted internationally in the AMSS(R) is incorrect. AMSC contends that during the Notice of Proposed Rule Making (NPRM) stage of this proceeding the Commission provided sufficient information that we were considering APC to be a service within the MSS. AMSC disputes the Aviation Parties claim that APC had not been excluded from the AMSS(R) by the international Radio Regulations.

5. We disagree with the Aviation Parties' contention that the Commission's holding that APC is not encompassed within the AMSS(R) was adopted without adequate notice and opportunity to comment. The purpose of this proceeding from the beginning has been to allocate the spectrum in the L-band between the MSS and AMSS(R) services. Determining the scope of these services goes to the very heart of the allocation issues. We have consistently held that the AMSS(R) includes only safety related services. Thus, we indicated in the NPRM that the AMSS(R) band has been allocated for distress and safety operations. We stressed that aircraft traffic control (ATC) is the principal safety service in this band. We also noted that the MSS might provide APC. We believe all parties had clear notice that the AMSS(R) services would encompass safety and related ATC services but not APC.

6. The Aviation Parties also contend that the Commission, in its MO&O, modified footnote US308 and adopted substantive provisions governing the provision of AMSS(R) without the requisite notice and opportunity to comment. The Aviation Parties argue that the footnote US308 as modified gives the ultimate MSS licensee a certain portion of the aviation traffic, namely, any of the AMSS(R) traffic that overflows the 10 MHz of exclusive AMSS(R) spectrum (1545.0–1549.5/1646.5–1651.0 and 1558.5–1559.0/1660.0–1660.5 MHz). The Aviation Parties also claim that the concept of interoperability is flawed in that the U.S. MSS system will not be capable of being interoperable with all foreign systems. On the other hand, AMSC points out that the underlying principle of interoperability is that if AMSS(R) traffic requires spectrum beyond the 10 MHz it must be accommodated by real-time preemptive access on the MSS system in the shared 18 MHz. AMSC points out that this was discussed at length in this proceeding and in footnote US308, which was the subject of vigorous debate in the reconsideration portion of this proceeding. AMSC also rejects the argument that interoperability will be unworkable. AMSC states that the requirement for an MSS system to provide priority access to AMSS(R) communications does not extend to all foreign systems.

7. We believe that our modification of footnote US308 at the reconsideration stage was a logical outgrowth of the sharing and allocations issues explored in this proceeding. In fact unless sharing were accomplished in the manner set forth on reconsideration, the entire MSS system should be required to shut down in order to accommodate the relatively small amounts of AMSS(R) communications that are anticipated. We believe that the notice requirements in this proceeding were adequate to allow all interested parties an opportunity to comment or file a competing application. We also disagree that the footnote US308 requirements

are unworkable. It was never our intention to require that our domestic MSSj system be interoperable with all foreign systems for the provision of all mobile-satellite services. Our requirement for interoperability with international systems extends only to those mobile-satellite systems providing AMSS(R) service. We believe that this can be achieved by having the U.S. licensee of the domestic MSS service incorporate into its overall system design whatever minimum requirements for AMSS(R) systems that are endorsed by the International Civil Avionics Organization and by establishing appropriate arrangements for handing off AMSS(R) traffic between its system and others, such as Canada's and INMARSAT's.

8. The Aviation Parties also contend that the allocation decisions adopted in the MO&O are contrary to the Commission's efforts to promote competition and deregulation. They point out that the new rules preclude competition and instead give a sole market share to the MSS licensee. AMSC states that the Commission's general policy is not the fostering of competition for its own sake; rather, its goal is the protection of the public interest, and in pursuit of that goal the FCC tries to foster competition wherever that is the best means of serving the public interest. GTE Airfone also commented that the U.S. MSS licensee will not have a monopoly on air-ground type services, contrary to the assertions of the Aviation Parties. GTE Airfone points out that they are offering air-ground service on an experimental basis in the 900 MHz band and hope to become a permanent licensee of that service. GTE points out that passenger communications will also be provided by British Telecom's Skyphone system and by INMARSAT.

9. We do not consider the policies adopted in this proceeding to be anti-competitive. We are determined to provide the MSS licensee with sole direct access to the co-primary spectrum in order to ensure that such a system will be viable. We believe that adequate competition exists such that the MSS licensee will not have a monopoly over aircraft passenger communications. While an additional provider would certainly be welcome, we believe that the limited spectrum in the L-band makes the option infeasible in this instance.

10. Accordingly, *It is ordered*, That the Petition for Further Reconsideration of the Aviation Parties is denied.

11. *It is ordered*, That the Motion to Accept submitted by Arinc and the Air Transport Association seeking to have the Commission admit into the record of this proceeding the Petition to Deny the Joint Amendment to the MSS applications filed by AMSC is denied. These issues are relevant to a separated proceeding and will be handled there.

12. *It is ordered*, That the Motion to Accept Supplemental Comments filed by Arinc and Air Transport Association of America is accepted. We find that the issues raised here, with the exception of the feasibility of coordination, raise no new issues that pertain to this proceeding.

List of Subjects

47 CFR Part 2

Radio, Frequency allocations

47 CFR Part 22

Communications common carriers, Radio, Frequencies

47 CFR Part 25

Communications common carriers, Radio, Satellites.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18886 Filed 8-16-89; 8:45 am]

BILLING CODE 6712-01-M

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47 Part 73

[MM Docket No. 88-463; RM-6360]

Radio Broadcasting Services; Wilson, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 279A to Wilson, Arkansas, as that community's first local broadcast service, in response to a petition for rulemaking filed by Clarence Medlin. See 53 FR 39614, October 11, 1988. Coordinates utilized for Channel 279A at Wilson are 35-32-38 and 90-07-10. With this action, the proceeding is terminated.

DATES: Effective September 25, 1989. The window period for filing applications on Channel 279A at Wilson, Arkansas, will open on September 26, 1989, and close on October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-463, adopted July 28, 1989, and released August 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Arkansas, by adding Wilson, Channel 279A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19311 Filed 8-16-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-47, RM-5977, RM-6148, RM-6364, RM-6365]

Radio Broadcasting Services; Oakdale, Tioga and West Monroe, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C2 for Channel 252A at West Monroe, Louisiana, and modifies the license of Station KYEA(FM) to specify operation on the higher class co-channel, at the request of Phoenix Broadcasting Company. The community could receive its first wide coverage area FM service. A site restriction of 16.3 kilometers (10.1 miles) northeast of the city is required. The coordinates are 32-37-28 and 92-01-37. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order, MM Docket No. 87-485, adopted July 26, 1989, and released August 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of

this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Louisiana, by removing Channel 252A and adding Channel 252C2 at West Monroe.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19310 Filed 8–16–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–520; RM–6516, RM–6585, RM–6651, RM–6652, RM–6653]

Radio Broadcasting Services; Woodstock, VA et al

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 277A to New Market, Virginia, as that community's first local FM service, at the request of Charles B. Johnson. In addition, this action: (1) Substitutes Channel 229B1 for Channel 240A at Woodstock and modifies the permit of Station WAZR(FM) at Woodstock to specify operations on the higher class channel, at the request of Ruarch Associates; (2) substitutes Channel 226A for Channel 228A at Staunton and modifies the license for Station WSGM(FM) at Staunton (See 53 FR 46099, November 16, 1988); (3) substitutes Channel 241B1 for Channel 238A at Broadway and modifies the permit for Station WLTK(FM) at Broadway, as requested by Massanutten Broadcasting Co., Inc.; (4) substitutes Channel 245B1 for Channel 245A at Mount Jackson and modifies the permit for Station WSIG(FM) at Mount Jackson, at the request of Shenandoah County Broadcasting Corporation; (5) substitutes Channel 255A for Channel 244A at Orange and modifies the license of Station WVJZ(FM); and (6) substitutes Channel 244B1 for Channel 244A at Buena Vista and modifies the license for Station WVLI(FM) to specify operation on the higher class station at the request of Equus Communications, Inc. The communities of Buena Vista, Broadway, Mount Jackson and Woodstock could receive a first wide coverage area FM service. With this action, this proceeding is terminated.

DATES: Effective September 25, 1989; The window period for filing applications on Channel 277A at New Market, Virginia, will open on September 26, 1989, and close on October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–520, adopted July 26, 1989, and released August 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Channel 277A at New Market, Virginia, requires a site restriction of 0.7 kilometer (0.4 mile) west of the city, at coordinates 38–38–00 and 78–42–42. Channel 229B1 at Woodstock, Virginia, requires a site restriction of 21.8 kilometers (13.5 miles) west of the city, at coordinates 38–48–18 and 78–44–18. A site restriction of 7.6 kilometers (4.7 miles) west of Mount Jackson is required for Channel 245B1. The coordinates are 38–44–41 and 78–43–51. Channel 241B1 at Broadway, Virginia, requires a site restriction of 38–36–31 and 78–54–07. Channel 244B1 at Buena Vista requires a site restriction of 11.6 kilometers (7.2 miles) east of the city at coordinates 37–43–22 and 79–13–23. The foregoing allotments must comply with the notification requirements of § 73.1030(a) of the Commission's Rules.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Virginia, by adding New Market, Channel 277A; by adding Channel 241B1 and removing Channel 238A at Broadway; by adding Channel 244B1 and removing Channel 244A at Buena Vista; by adding Channel 245B1 and removing Channel 245A at Mount Jackson; by adding Channel 255A and removing Channel 244A at Orange; by adding Channel 226A and removing Channel 228A at Staunton; and by adding Channel 229B1 and removing Channel 240A at Woodstock.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19309 Filed 8–16–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–380; RM–6264]

Television Broadcasting Services; Jonesboro, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 48 to Jonesboro, Arkansas, as that community's second local commercial television broadcast service, in response to a petition for rule making filed by Outlaw Broadcasting. See 53 FR 30853, August 16, 1988. Coordinates used for Channel 48 at Jonesboro are 35–50–12 and 90–42–24.

Although the Commission has imposed a freeze on TV allotments or applications therefor in specified metropolitan areas, pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–380, adopted July 26, 1989, and released August 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments for Arkansas, is amended, by adding Channel 48+ at Jonesboro.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-19313 Filed 8-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 88-373; FCC 89-231]

Private Land Mobile Radio Services; Offset Channels in the 150 MHz Band

AGENCY: Federal Communications Commission

ACTION: Final Rule.

SUMMARY: In response to the Notice of Proposed Rule Making, the Commission adopted the Report and Order. This action allowed use on a nationwide basis of existing 15 kHz offset channels in the 150 MHz band by both the Business Radio Service and the Taxicab Radio Service in the continental United States. In Puerto Rico and the Virgin Islands, the Commission provided for Business Radio use of new offset channels as well as additional high power paging channels. This action will promote more intensive use of available land mobile spectrum in this congested band. In the same document, the Commission declined to allow additional high power paging in the continental United States and reaffirmed the use of the 1950 Census data in licensing Business and Taxicab Radio eligibles on shared offset frequencies.

EFFECTIVE DATE: September 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden and Eugene Thomson, Land Mobile and Microwave Division, Private Radio Bureau (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, in PR Docket No. 88-373, FCC 89-231, adopted July 13, 1989, and released July 27, 1989.

The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this Report and Order may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Report and Order

1. A *Notice of Proposed Rule Making* (53 FR 35339, September 13, 1988) was adopted in this proceeding to promote more intensive use of available private land mobile spectrum in the congested 150 MHz band. A number of options were proposed concerning the use of offset channels in the continental United States, as well as in Puerto Rico and the Virgin Islands. The Commission also raised issues regarding high power paging and the continued use of the 1950 census data for licensing Business and Taxicab Radio eligibles.

2. After reviewing the record in this proceeding, the Commission came to the conclusion that the public interest would be served by providing opportunities for nationwide use of twelve offset channels in the 150 MHz band to both the Business and Taxicab Radio Services in the continental United States. These frequencies consisting of six pairs, are as follows: 152.285 MHz/157.545 MHz, 152.315 MHz/157.575 MHz, 152.345 MHz/157.605 MHz, 152.375 MHz/157.635 MHz, 152.405 MHz/157.665 MHz and 152.435 MHz/157.695 MHZ. These frequencies are adjacent on one side to channels assigned nationwide to the Taxicab Radio Service. On the other side, these offset channels are assigned to both the Taxicab Radio Service for use inside of the SMAs with populations greater than 50,000 and to the Business Radio Service outside of the SMAs. They are currently utilized by eligibles in the Taxicab Radio Service inside the Standard Metropolitan Areas (SMAs), but are not available for use outside the SMAs.

3. Because coordination has been implemented for the Business Radio Service (since 1986), the Commission was able to permit the use of the 12 subject offset frequencies on a nationwide basis in the continental United States. Both the Taxicab and Business Radio eligibles have demonstrated that greater use of these offsets is needed for private communications in this congested segment of the spectrum. Expanded use of these offsets should help alleviate some of the congestion of the 150 MHz band currently experienced in many areas.

4. The Commission concluded that because Business and Taxicab Radio eligibles use different modes of communication, requiring them to share spectrum might prove to be an unproductive means of satisfying either of their spectrum requirements. (Taxicab licensees operate in two-frequency simplex mode, whereas Business users operate only on one channel.) To provide eligibles in both services some relief from congestion on the 150 MHz band, the Commission decided to assign specific offset channels outside the SMAs for use by eligibles in each service. Because the Business Radio Service has significantly more users than the Taxicab Radio Service, the Commission provided the Taxicab Radio Service with four frequencies (152.315, 152.345, 157.575, and 157.605 MHz) and the Business Radio Service with eight frequencies (152.285, 152.375, 152.405, 152.435, 157.545, 157.635, 157.665 and 157.695 MHz). This not only allows Taxicab Radio eligibles to pair these frequencies in the same manner as their eight nationwide frequencies, but the four frequencies designated for taxicab use in this proceeding are adjacent to existing nationwide Taxicab frequencies. This will facilitate coordination of these channels by the Taxicab Radio Service's frequency coordinator.

5. In view of the congestion of the 150 MHz band, the Commission explored the possibility of creating new offset frequencies adjacent of Business Radio channels. It concluded, however, that it would not be beneficial to do so in the continental United States. The Commission recognized the limitations imposed by interference concerns regarding the existing use of 30 kHz channels, as well as interference to narrowband operations. Assignment of these frequencies for land mobile use could severely restrict future assignment of narrowband frequencies 2.5, 7.5 and 12.5 kHz removed, thus inhibiting application of this spectrum-efficient technology to private land mobile communications.

6. Because there now is a frequency coordination requirement for the Business Radio Service in the 150 MHz band, and the 150 MHz band in Puerto Rico and the Virgin Islands is much less congested than in the continental United States, the Commission made available in these areas 21 offset frequencies that are adjacent to Business Radio channels. The use of these offset channels by Business radio eligibles will not affect any other radio services because their adjacent channels already are assigned to the Business Radio Service. The Commission noted that no need has been demonstrated, nor

interest taken, by any other land mobile service in utilizing these offset frequencies. Furthermore, use of these offsets may be of actual benefit to eligibles in these areas because the 150 MHz band is significantly less congested in Puerto Rico and the Virgin Islands than in the continental United States.

7. After reviewing the record in this proceeding, the Commission determined that establishing high power paging frequencies 15 kHz adjacent to the Taxicab Radio channels in the 150 MHz band was inadvisable. Such action would likely degrade the use of the Taxicab Radio channels in that segment of the spectrum because of the disensitization of Taxicab mobile receivers in the vicinity of high power paging channels. In addition to the receiver problem, mobile unit transmitters operating in the vicinity of adjacent channel, high power paging base stations could suffer interference. In view of the potential interference not only to adjacent channel users, but others in the land mobile services, the Commission declined to allow the use of any of the existing offset channels in the continental United States for high power paging.

8. The Commission also rejected a proposal to allow high power paging on the 13 new offset channels that would have been adjacent to channels already assigned to the Business Radio Service because of serious interference concerns. Furthermore, no compelling need was indicated to warrant creating another potential for interference in this congested band. In view of other options available to meet paging needs (the use of 450 MHz and 900 Mhz paging frequencies), increasing the potential for interference in the 150 MHz band appears risky at best.

9. The Commission also rejected the proposal to allow an increase in the permitted maximum power to 350 watts on three frequencies already reserved for paging. The proximity of channel 157.740 MHz to non-Business frequencies, as well as to a common carrier channel used for mobile purposes, militates against allowing an increase in permitted power from 75 to 350 watts for that particular frequency. As to the other two paging channels (154.625 MHz and 158.460 MHz), any increase in power would cause harmful interference to land mobile operations in the 150 MHz band. Therefore, the Commission decided to retain its current prohibition on the power (20 watts) permitted on these two frequencies.

10. The Commission concluded that none of the above concerns regarding the interference potential of high power paging operation in the continental United States was not a serious concern in Puerto Rico and the Virgin Islands. Any new paging frequencies will be adjacent to existing, less-congested business channels in these areas. The frequency coordination process can therefore control the location as well as the assigned frequencies to minimize adjacent channel interference. The Commission also concluded that such paging could likely be conducted without creating harmful interference to narrowband operations. Therefore, the Commission allowed five of the 21 offset channels in Puerto Rico and the Virgin Islands to be utilized for high power paging.

11. Finally, the Commission decided to retain the list of cities based on the 1950 Census data for making assignments in the Taxicab and Business Radio Services. The use of different data would be inadvisable and, as a consequence of our providing additional nationwide taxicab frequencies, is unwarranted. In licensing Taxicab and Business users on the subject 150 MHz channels, the Commission has consistently relied on a single list of cities. Updating this list whenever new census data become available would cause a constantly changing, haphazard pattern of spectrum allotments between the two services.

Authority Citation

12. Authority for the action taken is contained in sections 4(i), 303(r) and 307(b) of the Communication Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 307(b)

List of Subjects in 47 CFR Part 90

Private land mobile radio services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

47 CFR part 90 is amended as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. In 47 CFR 90.75, the frequency table in paragraph (b) is amended by adding the frequencies 150.830, 150.860, 150.890, 150.920, 150.950, 151.010, 151.040, 151.070, 151.100, 151.130, 151.160, 151.190, 151.220, 151.250, 151.280, 151.310, 151.340, 151.370, 151.400, 151.430, 151.460, 152.285, 152.375, 152.405, 152.435, 157.545, 157.635, 157.665, and 157.695, together with their associated limitations, to read as follows:

§ 90.75 Business radio service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
150.830	Base	8,10,12
*	*	*
150.860	Base	8,10,12
*	*	*
150.890	Base	8,10,12
*	*	*
150.920	Base	8,10,12
*	*	*
150.950	Base	8,10,12
*	*	*
151.010	do	8
*	*	*
151.040	do	8
*	*	*
151.070	do	8
*	*	*
151.100	do	8
*	*	*
151.130	do	8
*	*	*
151.160	do	8
*	*	*
151.190	do	8
*	*	*
151.220	do	8
*	*	*
151.250	do	8
*	*	*
151.280	do	8
*	*	*
151.310	do	8
*	*	*
151.340	do	8
*	*	*
151.370	do	8
*	*	*
151.400	do	8
*	*	*
151.430	do	8
*	*	*
151.460	do	8
*	*	*
152.285	do	9
*	*	*
152.375	do	9
152.405	do	9
*	*	*
152.435	do	9
*	*	*
157.545	Base or mobile	9
*	*	*
157.635	do	9
157.665	do	9
*	*	*
157.695	do	9

3. In 47 CFR 90.93, the frequency table in paragraph (b) is amended by changing the limitations for the frequencies 152.285, 152.315, 152.345, 152.375, 152.405, 152.435, 157.545, 157.575, 157.605, 157.635, 157.665, and 157.695 to read as follows:

§ 90.93 Taxicab radio service.

* * * * *

(b) * * *

TAXICAB RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
152.285	do	1,2
*	*	*
152.315	do	
*	*	*
152.345	do	
*	*	*
152.375	do	1,2
*	*	*
152.405	do	1,2
*	*	*
152.435	do	1,2
*	*	*
157.545	do	1,2
*	*	*
157.575	do	
*	*	*
157.605	do	
*	*	*
157.635	do	1,2
*	*	*
157.665	do	1,2
*	*	*
157.695	do	1,2
*	*	*

4. In 47 CFR 90.555, the frequency table in paragraph (b) is amended by changing service and limitation entries for the frequencies 150.830, 150.860, 150.890, 150.920, 150.950, 151.010, 151.040, 151.070, 151.100, 151.130, 151.160, 151.190, 151.220, 151.250, 151.280, 151.310, 151.340, 151.370, 151.400, 151.430, 151.460, 152.285, 152.315, 152.345, 152.375, 152.405, 152.435, 157.545, 157.575, 157.605, 157.635, 157.665, and 157.695 to read as follows:

§ 90.555 Combined frequency listing.

* * * * *

(b) * * *

Frequency	Services	Special limitations
*	*	*
150.830	IB,LA	Do, paging only.
*	*	*
150.860	IB,LA	Do, paging only.
*	*	*
150.890	IB,LA	Do, paging only.
*	*	*
150.920	IB,LA	Do, paging only.
*	*	*
150.950	IB,LA	Do, paging only.
*	*	*
151.010	IB,PH	Do.
*	*	*
151.040	IB,PH	Do.
*	*	*
151.070	IB,PH	Do.
*	*	*
151.100	IB,PH	Do.
*	*	*
151.130	IB,PH	Do.
*	*	*
151.160	IB,PO	Do.
*	*	*
151.190	IB,PO	Do.
*	*	*
151.220	IB,PO	Do.
*	*	*
151.250	IB,PO	Do.
*	*	*
151.280	IB,PO	Do.
*	*	*
151.310	IB,PO	Do.
*	*	*
151.340	IB,PO	Do.
*	*	*
151.370	IB,PO	Do.
*	*	*
151.400	IB,PO	Do.
*	*	*
151.430	IB,PO	Do.
*	*	*
151.460	IB,PO	Do.
*	*	*
152.285	IB,LX	IB outside, LX inside SMAs over 50,000 pop.
*	*	*
152.315	LX	
*	*	*
152.345	LX	
*	*	*
152.375	IB,LX	Do.
*	*	*
152.405	IB,LX	IB outside, LX inside SMAs over 50,000 pop.
*	*	*
152.435	IB,LX	Do.
*	*	*
157.545	IB,LX	IB outside, LX inside SMAs over 50,000 pop.
*	*	*
157.575	LX	
*	*	*
157.605	LX	
*	*	*
157.635	IB,LX	Do.
*	*	*
157.665	IB,LX	IB outside, LX inside SMAs over 50,000 pop.
*	*	*
157.695	IB,LX	Do.
*	*	*

[FR Doc. 89-19257 Filed 8-16-89; 8:45am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 90652-9152]

High Seas Salmon Fishery off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing for 10 days the U.S. Exclusive Economic Zone off Southeast Alaska to commercial fishing for all salmon species. This action is necessary to stop the harvest of coho salmon by the troll fishery and is intended to ensure that the coho salmon stocks are not overharvested and the various groups of fishermen share the harvest equitably.

DATES: This notice is effective at 0001 hours Alaska Daylight Time (A.D.T.), Monday, August 14, 1989, and will expire at 2359 hours A.D.T., Wednesday, August 23, 1989. Public comments are invited until September 14, 1989.

ADDRESSES: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection from 0800 through 1630 hours A.D.T. Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Anderson (Fishery Management Biologist, NMFS) 907-586-7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the U.S. Exclusive Economic Zone (EEZ) off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175 Degrees East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR part 674.

The FMP also implements provisions of the Pacific Salmon Treaty and the Pacific Salmon Treaty Act (16 U.S.C. 3631 *et seq.*). Article III of the treaty requires that each Party conduct its fisheries to prevent overfishing of the salmon stocks subject to the treaty. The coho stocks being protected by this action are stocks subject to the treaty (article I (a) and 1988 amendment of annex, IV, chapter 5).

The troll fishery in the EEZ off Alaska and in Alaskan outside coastal waters is the first fishery to intercept the returning coho salmon. As of August 12, this fishery has harvested 1.1 million coho; a number 222 percent above the 1971-1980 average harvest of 345 thousand by this date. In contrast, the harvests by the fisheries in the internal waters of Southeast Alaska have done less well, with the cumulative gillnet catch being 65% above the average and the

Ketchikan and Juneau sport fisheries having cumulative catch-per-unit of efforts of 33 percent to 42 percent below average. Few coho have entered spawning streams at this date.

In 1980, the Council amended section 8.3.1.4 of the FMP to provide for an area-wide closure of the entire troll fishery for 10 days to stabilize or reduce coastal and offshore fishing effort on coho salmon unless an evaluation of the coho runs and harvests indicated a "well above average magnitude and good movement inshore." The Council took this action in cooperation with the Alaska Board of Fisheries (Board) so that the troll fishery in the EEZ and in State waters would be under consistent management. The Council intended that if the State issued a closure for coho, a similar closure should be instituted for the EEZ, under the procedures outlined in section 8.3.1.5. of the FMP and specified at 50 CFR 674.23.

Further, regulations implementing the FMP (at 50 CFR 674.23(a)) also provide that the Secretary of Commerce (Secretary) may modify the fishing times and areas based on a determination by the Regional Director that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area;

(2) The catch per unit of effort and the rate of harvest;

(3) The relative abundance of salmon stocks within the management area;

(4) The condition of salmon stocks throughout their ranges;

(5) Any other factors relevant to the conservation of salmon.

Alaska has similar criteria for the fisheries in its waters. In the spring of 1989, the Board established the following historical percentages as guidelines for the coho harvest by each type of commercial gear in Southeast Alaska: Troll (61), purse seine (19), drift gill net (13), set gill net (7). The Board stated that its intention was that these allocation guidelines be met as closely as possible over the long term, and authorized the Alaska Department of Fish and Game to adjust fishing times and areas to attempt to achieve these long-term allocation guidelines.

Based on the harvests to date by the various commercial and recreational fisheries, the Alaska Department of Fish and Game is closing the troll fishery in State waters for 10 days beginning at 0001 hours on August 14 to ensure adequate migration of coho from coastal waters to internal waters and the spawning streams and to address allocation of coho salmon between the offshore troll fishery and the troll, net, and recreational fisheries of the internal waters of Alaska.

The Regional Director, having reviewed the evidence of the coho harvests and being aware of Alaska's proposed action, has determined that the effect of overall fishing effort, the catch per unit of effort, and the well-above-average rate of harvest by the outside troll fleet requires a closure of the troll fishery in the EEZ.

On Friday, August 11, 1989, the Alaska Department of Fish and Game and the NMFS issued a joint announcement that the commercial troll fishery would close for 10 days, beginning at 0001 hours ADT on August 14, 1989, and the Secretary is implementing the 10-day closure prescribed by this action. The closure will become effective after this notice has been filed for public inspection with the Office of the Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stocks harvested in Southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553(b) and (d). However, 50 CFR 674.23(b)(3) requires the Secretary to accept and consider public comments for 30 days after the effective date of this notice. The aggregated data upon which this closure is based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity of this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

This action is authorized by 50 CFR part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 3631 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: August 11, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 89-19279 Filed 8-11-89; 4:58 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 158
Thursday, August 17, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

7 CFR Parts 1900, 1910, 1951, 1955, 1962, and 1965

RIN 0575-AA39

NonProgram Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to implement regulations for NonProgram (NP) loans and revise several FmHA Instructions to reference the new NP regulation. This action is necessary since NP loans are not eligible for program supervision and servicing and NP debtors are not eligible for program benefits and entitlements. They cannot, therefore, be made, managed, collected, and liquidated in the same manner as program loans. In the past, there have been a relatively small number of NP loans, which are on more stringent terms than program loans and an extension of credit for the convenience of the Government. The intended effect is to have a regulation for the uniform handling of NP loans.

DATES: Comments must be submitted on or before October 16, 1989.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jean F. Leavitt, Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, Room 5309, Washington, DC 20250, telephone: (202) 382-1452.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or ore; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Background Information

7 CFR part 1951, subpart J—Management and Collection of Nonprogram (NP) Loans is a new regulation which establishes procedures for the making, management, servicing, and liquidation of nonprogram (NP) loans. Nonprogram (NP) loans are an extension of credit for the convenience of the Government to facilitate loan servicing actions or assist with the sale of acquired property. Program credit is not provided because the property either does not meet current program requirements and/or the applicant does not meet current loan program eligibility requirements. An NP loan is made on more stringent terms than a program loan. Previously, guidance on handling NP loans was dispersed through various regulations including subparts A and C of part 1965 and subpart C of part 1955. The new regulation will combine those portions of these regulations of NP loans into one regulation and provide for guidance that was not previously and/or explicitly provided in existing regulations. This will make it easier for FmHA personnel and the general public to ascertain our regulations on NP loans.

The major issues in subpart J of part 1951 which are clarified, established, or vary from that contained in existing FmHA regulations are as follows:

1. Reiterates and clarifies that NP loans are eligible for program supervision or management, and NP debtors are not entitled to program benefits and entitlements such as interest credit, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance or appeal rights.

2. Establishes a nonrefundable application fee, which will change periodically, to process an application for NP credit. The application fee is exclusive of any required credit report fee. Proposes to intially set the fee at $100.

3. Reduces downpayment requirements on NP credit sales of farm real estate. Currently, a 10% downpayment is required on NP credit sales, while the downpayment for a NP transfer and assumption is only 5%. The downpayment requirements, regardless of whether the property is sold from FmHA inventory or by a debtor through transfer and assumption, will be 5% for consistency.

4. Establishes a collection policy consistent with conventional lenders on the servicing and collection of overdue payments. Program servicing regulations and authorities are not authorized.

5. Establishes policy concerning accepting a voluntary conveyance of NP property only when voluntary liquidation cannot be accomplished and it is in the Government's best interests. The State Director is the only FmHA field official authorized to accept a voluntary conveyance from a NP borrower.

6. Clarifies that acceleration letters to NP borrowers will not contain appeal rights, but will provide rights to have the decision reviewed by the next level supervisor to determine if the loan is not in default.

7. Provides detailed guidance on debt settlement of NP debts.

8. Provides that NP debtors will not be released from liability unless the NP debt is satisfied in full.

The major revisions in other regulations which are incorporated in this rulemaking are as follows:

1. Section 1951.314(a)(9) is added to allow the remaining balance of the account to be reamortized when the total FmHA debt is not assumed.

2. Section 1951.612(a)(1)(iii) is revised to remove the authority to enter into an accelerated repayment agreement.

3. Section 1965.26(f) is revised to provide the authority to voucher for authorized selling expenses for which there are insufficient equity proceeds for payment at closing.

4. Section 1965.125(a)(3) is revised to remove authority to permit accelerated repayment agreements.

5. Section 1965.126(b)(3) is revised to provide that the remaining debt of the transferor's account will be reamortized in accordance with Subpart G of Part 1951 of this chapter.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance (CFDA) under Nos:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing and Water Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.427 Rural Rental Assistance Payments

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, the following programs are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials: 10.404—Emergency Loans, 10.406—Farm Operating Loans, 10.407—Farm Ownership Loans, 10.410—Low Income Housing Loans, 10.416—Soil and Water Loans, and 10.417—Very Low Income Housing Repair Loans and Grants. The following programs are subject to intergovernmental consultation with State and local officials: 10.405—Farm Labor Housing Loans and Grants, 10.411—Rural Housing Site Loans, 10.414—Resource Conservation and Development Loans, 10.415—Rural Rental Housing Loans, 10.418—Water and Waste Disposal Systems for Rural Communities, 10.419—Watershed Protection and Flood Prevention Loans, 10.421—Indian Tribes and Tribal Corporation Loans, 10.422—Business and Industrial Loans, 10.423—Community Facility Loans, and 10.427—Rural Rental Assistance Payments.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–90, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—housing and community development.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1951

Account Servicing, Low and moderate income housing loans—Servicing, Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property, Rural areas, Administrative practice and procedure, Mortgages, Accounting.

7 CFR Part 1955

Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and Community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1900—GENERAL

1. The authority citation for part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Adverse Decisions and Administrative Appeals

2. Section 1900.51 is amended by adding a sentence to the end of paragraph (b) to read as follows:

§ 1900.51 General.

* * * * *

(b) * * * The provisions of this subpart do not apply to decisions involving nonprogram (NP) loans.

§ 1900.55 [Amended]

3. Section 1900.55 is amended by removing paragraph (a)(13) and redesignating (a)(14) as (a)(13).

PART 1910—GENERAL

4. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Receiving and Processing Applications

5. Section 1910.1 is amended in the introductory text by adding a sentence at the end of the paragraph to read as follows:

§ 1910.1 General.

* * * Receiving and processing applications for nonprogram (NP) loan(s) will be handled in accordance with subpart J of part 1951 of this chapter.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

6. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

7. Section 1951.301 is amended by revising the fourth and fifth sentences to read as follows:

§ 1951.301 Purpose.

* * * It does not apply to borrowers who assumed RH loans, or have

purchased inventory housing by credit sale, on Nonprogram (NP) terms unless refinanced in accordance with § 1951.315 of this subpart. NP loans will be served in accordance with subpart J of part 1951 of this chapter. * * *

8. Section 1951.314 is amended by adding paragraph (a)(9) to read as follows:

§ 1951.314 Reamortizations.

* * * * *

(a) * * *

(9) When only a portion of the security property is being transferred and the total FmHA debt is not being assumed. The remaining balance will be reamortized for a period not to exceed 10 years or the final due date of the note being rescheduled, whichever is sooner.

* * * * *

9. Subpart J of part 1951 is added to read as follows:

Subpart J—Management and Collection of Nonprogram (NP) Loans

Sec.

1951.451 General.
1951.452 Policy.
1951.453 [Reserved]
1951.454 NP loan making for single family housing and farm property (real and chattel).
1951.455–1951.457 [Reserved]
1951.458 Payments.
1951.459 Preservation of security.
1951.460 Release of security property or sale or lease of related property rights.
1951.461 Release of valueless FmHA lien without monetary consideration.
1951.462 Deceased borrower.
1951.463 Transfer of security and assumption of indebtedness.
1951.464–1951.467 [Reserved]
1951.468 Liquidation.
1951.469 Actions after liquidation of property.
1951.470–1951.478 [Reserved]
1951.479 Pilot projects.
1951.480 [Reserved]
1951.481 FmHA Instructions.
1951.482–1951.499 [Reserved]
1951.500 OMB control number.

Subpart J—Management and Collection of Nonprogram (NP) Loans

§ 1951.451 General.

This subpart sets forth policies and procedures of the Farmers Home Administration (FmHA) for making, managing, collecting, liquidating and settling loans on nonprogram (NP) terms, except those on properties which secure(d) Community and Business Program (C&BP) loans or Multi-Family Housing (MFH) loans. Community and Business Program (C&BP) NP and MFH/NP transactions involving transfer of the security property will be authorized and guidance given on individual cases by the National Office. The sale of C&BP and MFH inventory property to NP purchasers will be handled in accordance with subpart C of part 1955 of this chapter. Borrowers who have program and NP loans will have their loan accounts serviced and liquidated in accordance with the applicable program regulations. However, even though the NP loan will not be eligible for program servicing benefits or entitlements, the borrower is not precluded from receiving assistance on the program loan (e.g., having an NP farm loan should not preclude a borrower from being considered for debt restructuring assistance in the form of a deferral, rescheduling , consolidation, etc., on a FP program loan). An NP loan is a loan on terms more stringent that terms for a program loan and it is an extension of credit for the convenience of the Government because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Government. NP loans include:

(a) Sale of inventory property on nonprogram terms;

(b) Assumption of a program loan on nonprogram terms;

(c) Loan converted to NP status as a result of receipt of unauthorized assistance;

(d) Sale of the real property of a Farmer Program (FP) borrower under the leaseback/buyback program on nonprogram terms;

(e) Sale of the real property of a Farmer Program (FP) borrower under the Homestead Protection program; or

(f) FP accounts rescheduled under an accelerated repayment agreement.

§ 1951.452 Policy.

Nonprogram credit is extended for the convenience of the Government in servicing an existing loan or to facilitate sale of inventory property. Where a borrower has both program and NP loans outstanding, servicing will be according to the regulation applicable to the program loan(s). NP borrowers are not eligible for program benefits or entitlements such as subsidy, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance, or appeal rights under subpart B of part 1900 of this chapter. Neither are they subject to occupancy/operation requirements, graduation or other similar requirements imposed on program borrowers. NP borrowers are required to adequately maintain the security, pay real estate taxes and/or assessment when due, and keep buildings insured according to the promissory note and mortgage or security agreement, but may lease all or a portion of the security without FmHA's consent, except as provided in § 1951.460(b) of this subpart.

§ 1951.453 [Reserved]

§ 1951.454 NP loan making for single family housing and farm property (real and chattel).

(a) *Application for NP credit.* Applications for credit on NP terms are made at the FmHA County Office serving the area where the property is located or through an approved packager or real estate broker if so instructed by FmHA county office personnel. An application must contain sufficient documentation to allow FmHA to determine that the applicant possesses financial stability, creditworthiness, and repayment ability for the requested credit. Standard forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the loan approval official having discretion to determine what information in required to support approval of the loan, except that, for property purchased under the leaseback/buyback program and Homestead Protection program, the information required to support approval of the loan will be in accordance with § 1951.907(h) of subpart S of part 1951 of this chapter. A nonrefundable application fee must be submitted with the application, in addition to a credit report fee if required by FmHA. The amounts of these fees change periodically; current fees will be quoted by FmHA county office personnel upon request. The application is not complete until all information requested by FmHA is received. A borrower whose loan is reclassified as NP because unauthorized assistance was received or FP accounts rescheduled under an accelerated repayment agreement will not be required to submit an application or pay the application fee. Additionally, in accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if farm property is being purchased or the debt assumed, and an individual or member, stockholder, partner, or joint operator or an entity transferee or purchaser is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the credit sale or

assumption in any crop year, the individual or entity shall be ineligible for a credit sale or assumption for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Purchasers will attest on the application form used that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(b) [Reserved]

(c) *Downpayment.* A downpayment will be collected at closing and remitted in accordance with subpart B of part 1951 of this chapter (available in any FmHA office). The minimum downpayment will be based on the purchase price for a credit sale and the current market value (less any prior liens for chattel property) or the debt, whichever is lower, for an assumption. Downpayment requirements vary from time to time and vary by type of property. Current downpayment requirements will be provided by FmHA county office personnel upon request.

(d) *Interest rate.* Interest rates change periodically and vary by type of property. Current interest rates will be provided by FmHA county office personnel upon request.

(e) *Terms.* The purchase price for credit sales or the FmHA debt being assumed, less the downpayment amount, will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *Single family residence.* For owner/occupant, the term will not exceed 30 years. For investor/nonoccupant, the term will not exceed 10 years; a 20-year amortization factor with balloon payment due not later than 10 years from the closing date may be authorized if FmHA determines it is necessary to facilitate the sale. For a property purchased by a presently indebted NP owner/occupant which the purchaser intends to occupy, the term may be for a period not to exceed 30 years on the condition that the existing loan is reamortized for a period not to exceed 10 years less the number of years the loan has been outstanding. If the existing loan has been outstanding for more than 10 years the loan must be paid off.

(2) *Farm real estate and CONACT residential property classified as surplus.* The term will not exceed 15 years, unless FmHA determines extension up to 25 years is in the Government's best interest.

(3) *Farm chattels.* The term will not exceed 5 years.

(4) *Farm real estate (Leaseback/Buyback).* The term will not exceed 25 years.

(5) *Homestead protection.* The term will not exceed 35 years.

(f) [Reserved]

(g) *Security.* The security requirements for an NP loan on a single family residence will be in accordance with subpart A of part 1944 of this chapter. The security requirements for NP loans on farm real estate will be in accordance with subpart A of part 1943 of this chapter and NP loans on chattel security will be in accordance with subpart A of part 1941 of this chapter.

(h) *Closing.* Title clearance, preparation of deeds, loan closing and property insurance requirements are the same as for an FmHA program loan on the same type property, except the purchaser must pay his/her own closing costs.

§§ 1951.455–1951.457 [Reserved]

§ 1951.458 Payments.

(a) [Reserved]

(b) *Payments not received when due.* NP borrowers are expected to make scheduled payments when due. FmHA personnel are not required to provide program supervision, servicing, management or credit counseling. To ensure consistency, a series of collection letters will be used to service delinquent accounts. All actions taken, agreements reached and recommendations made in the servicing of the borrower's account are to be documented. When appropriate, FmHA may work out a reasonable agreement with an NP borrower to cure a delinquency; however, such an agreement will not usually exceed 1 year. Failure to make payments as agreed will result in actions determined by FmHA to best protect the Government's interest. Collection of a delinquency from an Internal Revenue Service (IRS) refund will be considered to the extent permitted by law.

§ 1951.459 Preservation of security.

(a) *Inspections of NP security property.* FmHA reserves the right to inspect the security as necessary to protect its security interest.

(b) *Subordination.* Subordination is not authorized where an NP borrower only owes FmHA an NP loan(s). Subordination of a mortgage may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien only when the security for the NP loan is also security for an FmHA program loan, the request for the subordination meets all the requirements for the subordination of the FmHA program loan and is in the best interest of the Government.

(c) *Delinquent real estate taxes and/or assessments.* An NP borrower is expected to pay real estate taxes and/or assessments (which are or become prior liens on the security property) before they become delinquent. Nonpayment of taxes and/or assessments is a default under the security instrument. If it becomes necessary for FmHA to pay these obligations to protect its security interest, liquidation of the account is required, by voluntary means if possible.

(d) *Bankruptcy.* NP loans on single family residences will be serviced in accordance with subpart C of part 1965 of this chapter, farm (real estate) in accordance with subpart A of part 1965, and farm (chattel) in accordance with subpart A of part 1962 of this chapter.

§ 1951.460 Release of security property or sale or lease of related property rights.

(a) *Partial release.* Release of a portion of the security property may be made when the borrower requests it and FmHA determines the release will not adversely affect the Government's interest. Release may be approved when payment is received by FmHA in the amount of the market value, as determined by FmHA, of the property to be released. Proceeds from such transactions (less related expenses authorized by FmHA) must be applied to the FmHA debt as an extra payment or to prior liens in order of lien priority.

(b) *Easements, right-of-ways, and lease of mineral rights or other rights.* Consent may be given by FmHA for the borrower to grant an easement or lease mineral rights when it is determined by FmHA the action will not adversely affect the Government's interest. The granting of an easement or right-of-way and lease of mineral rights may be approved when payment is received by FmHA in the amount of the market value, as determined by FmHA, for rights granted or benefits are derived which are equal to or greater than the value of the property being disposed of. Proceeds from these transactions (less related expenses authorized by FmHA) will be applied to the FmHA debt as an extra payment or to prior liens in order of lien priority.

(c)–(d) [Reserved]

§ 1951.461 Release of valueless FmHA lien without momentary consideration.

Release of an FmHA lien without monetary consideration may be granted when it is determined by FmHA to have no present or propsective value or when enforcement would be ineffectual or

uneconomical. This does not include judgment liens or statutory redemption rights except with the consent of OGC.

§ 1951.462 Deceased borrower.

When an NP borrower dies, FmHA will determine whether or not arrangements can be effected for continuation of the loan under one of the provisions of this section. If not, the loan may be liquidated according to § 1951.468 of this subpart.

(a) *General.* The servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a)(1) through (a)(4) of this section.

(1) *Continue with jointly liable borrower.* If a jointly liable borrower will repay the loan and fulfill other obligations of the loan, FmHA will take no action to liquidate the loan.

(2) *Assumption by spouse not liable for the FmHA loan.* The spouse of a deceased borrower who is not liable for the FmHA loan and who wishes to assume the loan may do so in accordance with § 1951.463(d)(1) of this subpart.

(3) *Continue with joint tenant, tenant by the entirety, or other person.* When a joint tenant, tenant by the entirety, or other person who inherits title to (or an interest in) the security property, on which the principal residence is located, by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured. The loan may be assumed in accordance with § 1951.463(d) of this subpart; however, assumption of the indebtedness is not required. Continuation with a joint tenant, tenant by the entirety, or other person under this paragraph applies only to the transfer of title resulting from death of the borrower; it does not apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritors or sale of interest among inheritors to consolidate title. Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1951.463 of this subpart.

(4) *Assumption by person, other than the spouse, who is not liable for the FmHA loan.* A person other than the deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1951.463(d)(1) of this subpart provided:

(i) The residence will continue to be occupied by one or more persons who were dependent on the borrower at the time of death; and

(ii) There is reasonable prospect for orderly repayment of the loan and other obligations of the loan will be met.

§ 1951.463 Transfer of security and assumption of indebtedness.

When a borrower proposes to sell security property, assumption of the indebtedness may be approved on program or nonprogram terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. Assumptions under paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (d) of this section only are authorized on existing terms. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA debt is not assumed by the purchaser (new owner) or paid in full, the conveyance will not be approved, except as provided in paragraphs (b)(2) and (b)(5) of this section of § 1951.462 of this subpart. If the conveyance is not approved the loan must be liquidated unless FmHA determines it is not in the Government's best interest. If FmHA decides to continue with the loan, the account will be serviced in the borrower's name and the borrower will remain liable under the terms of the security instrument.

(a) [Reserved]

(b) *General.* The following paragraphs apply to all transfers and assumptions under this subpart:

(1) *Amount of assumption.* Except for transfers covered in paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section, the transferee will assume the lesser of the indebtedness, or current market value as determined by FmHA, less any prior liens and the downpayment.

(2) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or child (children), assumption of the indebtedness is not required and FmHA may not take action to liquidate the loan as long as payments are made and other obligations of the loan are met. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (d)(1) of this section as applicable to the circumstances.

(3) *Withdrawal of jointly liable borrower.* When a stockholders/members/partners/joint operator of an entity who is personally liable on the note withdraws from the entity or dies, and all of the remaining individuals are not personally liable on the note(s), the loan must be assumed by all remaining parties.

(4) *Addition of new transferee(s).* When new stockholder/member/partner/joint operators enter an entity, assumption of the indebtedness is required, however, the indebtedness may be assumed on existing terms. A downpayment from the new party based on the unpaid balance of the loan is required when the assumption is closed.

(5) *Conveyance of security property into an intervivos trust.* When the borrower conveys security property into an intervivos trust, whereby the borrower does not transfer rights of occupancy in the property, FmHA may not take action to liquidate the loan as long as payments ar made as scheduled and other obligations of the loan are met.

(c) *Program assumption.* A NP loan may be assumed by an eligible program applicant if the property meets the eligibility requirements for a currently authorized program (single family housing, farm ownership, etc.). In such cases, the assumption will be at the interest rate and up to the maximum term in effect for the type loan involved at the time the assumption is approved. After assumption on program terms, the loan will be reclassified as an RH, FO, etc., as applicable.

(d) *NP assumption.* The rates and terms for a NP assumpton will be as provided in § 1951.454 of this subpart. A loan may be assumed on existing terms only in the situations outlined in paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d)(1), (d)(2) and (d)(3) of this section. An individual not liable for the loan who acquired title to or an interest in the security by means of one of the situations mentioned may assume the indebtedness on existing terms or current terms if more favorable, in which case a downpayment based on the unpaid balance would be required. The interest rate, final due date, payment date, account status (current, delinquent, ahead of schedule) will not be changed by virtue of an assumption on existing terms. After assumption compliance with loan conditions is required. Situations where these terms are authorized are:

(1) An individual who acquires title to or an interest in the security property by virtue of death, divorce, or deed from a spouse or parent but is not liable for the debt and who wishes to assume the loan may do so. Any subsequent transfer of title, except between inheritors to

consolidate title, will be treated as a sale and is not covered by these provisions. Individuals in this category are:

(i) A deceased borrower's spouse.

(ii) A divorced borrower's spouse.

(iii) A joint tenant with right of survivorship or relative of a deceased borrower.

(2) The spouse of child of a living borrower to whom title to the security property has been conveyed by spouse or parent.

(3) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1951.462(a)(4) of this subpart may do so.

(e) *County Committee actions on Farmer Program assumptions.* On program assumptions the County Committee must certify the transferee's eligibility for the type of loan to be assumed.

(f) *Title clearance and loan closing.* Title clearance and closing will be the same as for any program loan of the same type.

(g) *Release from liability.* Release from liability of NP borrowers is not authorized.

§§ 1951.464–1951.467 [Reserved]

§ 1951.468 Liquidation.

When it is determined an NP borrower cannot or will not successfully repay the loan, FmHA will attempt to have the borrower liquidate voluntarily.

(a) *Voluntary.* If an NP borrower in default is willing to voluntarily liquidate, other liquidation action by FmHA may be delayed for a reasonable period, usually not to exceed 120 days for real estate, if the borrower is earnestly seeking other financing, or has the security property listed or offered for sale and it is being actively marketed at a reasonable price. Voluntary conveyance of real property to FmHA will not be considered unless voluntary liquidation cannot be accomplished by other means and it is determined to be in the Government's best interest. FmHA generally does not consider accepting voluntary conveyance of chattels; chattels should normally be sold and the proceeds applied to the NP loan. Release of the borrower from liability is not authorized.

(b) *Foreclosure.* If an NP borrower in default (monetary or nonmonetary) does not cure the default and is not willing to voluntarily liquidate, the servicing official will refer the case to the next level supervisor with a recommendation for further action. If foreclosure is approved, the account will be accelerated. NP borrowers do not have appeal rights under subpart B of part 1900 of this chapter; however, the NP borrower may request a review of the decision to foreclose by the next level supervisor to consider evidence that the loan is not in default. If the borrower fails to satisfy the account during the period specified in the demand letter, FmHA will proceed with foreclosure without further notice or extension of time.

(c) *Consent to sale of real estate security when the FmHA loan and authorized selling expense exceed market value.* If a NP borrower proposes to sell real estate security for an amount which is insufficient to pay the FmHA debt, prior lien(s) if any, and sale expenses authorized by FmHA, an appraisal will be completed and FmHA may consent to the sale if the proposed sale price is not less than the market value. In no case will the borrower (seller) will receive any cash proceeds from the sale. Release from liability is not authorized.

§ 1951.469 Actions after liquidation of property.

(a) [Reserved]

(b) *Unsatisfied account.* When application of sale proceeds does not satisfy an NP loan; or if FmHA has accepted voluntary conveyance and credit of the market value less prior liens and estimated inventory handling expenses does not satisfy the debt, FmHA will normally seek a deficiency judgment for the remaining debt including expenses paid by FmHA.

(c) [Reserved]

§§ 1951.470–1951.478 [Reserved]

§ 1951.479 Pilot projects.

From time to time FmHA conducts pilot projects to test concepts related to the management and/or sale of SFH inventory property which may deviate from the provisions of this subpart, but will not be inconsistent with provisions of the authorizing statutes, or other Acts affecting FmHA's loan programs. Prior to initiation of a pilot project, FmHA will publish in the Federal Register a Notice outlining the nature, scope, and duration of the pilot. The pilot projects may be handled by FmHA employees and/or under contract with persons, firms, or other entities in the private sector.

§ 1951.480 [Reserved]

§ 1951.481 FmHA Instructions.

Detailed FmHA Instructions for administering this subpart are available in any FmHA office [FmHA Instruction 1951–J].

§§ 1951.482–1951.499 [Reserved]

§ 1951.500 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget (OMB) and assigned OMB control number ———

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

10. Section 1951.612 is amended by removing paragraph (a)(1)(iii) and redesignating paragraph (a)(1)(iv) as (a)(1)(iii); and by revising the newly designated paragraph (a)(1)(iii) introductory text and (a)(1)(iii)(A) and (D) to read as follows:

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(a) * * *

(1) * * *

(iii) If the recipient was not eligible for a loan, or the loan was approved for unauthorized purposes as outlined in paragraph (a)(1)(iv) of § 1951.604 of this subpart, or the case is not serviced according to paragraphs (a)(1)(i) or (ii) of this section, continuation with the loan on the existing terms is authorized, after which the loan will be serviced as an authorized loan, except that, if interest credit is granted in a case where continuation is authorized under the provisions of this paragraph, all subsidy granted will be recaptured to the extent proceeds are available when the property is sold, allowing a deduction for authorized selling expenses only. Where interest credit is granted in cases of this type, the following actions must be taken:

(A) The borrower must agree in writing to the recapture of subsidy as outlined in paragraph (a)(1)(iii) of this section executing an agreement in the format of exhibit E of this subpart (available in any FmHA office).

* * * * *

(D) If the borrower refuses to execute the agreement prescribed in paragraph (a)(1)(iii)(A) of this section, interest credit will not be granted on the loan.

* * * * *

§ 1951.618 [Amended]

11. Section 1951.618 is amended by removing paragraph (a)(1)(ii) and by redesignating paragraph (a)(1)(iii) as (a)(1)(ii); by removing paragraph (a)(8)(i)(B) and by redesignating paragraph (a)(8)(i)(C) as (a)(8)(i)(B).

Subpart S—Farmer Programs Account Servicing Policies

12. Section 1951.909 is amended by revising the second sentence of paragraph (e)(2) to read as follows:

§ 1951.909 Processing Primary Loan Service Programs requests.

* * * * *

(e) * * *

(2) * * * Farmer program nonprogram (NP) loan borrowers are not eligible to receive any program benefits including reamortization (see subpart J of part 1951 of this chapter). * * *

* * * * *

13. Section 1951.911 is amended by removing paragraphs (b)(10), (b)(12) and (c) and redesignating paragraph (b)(11) as (b)(10) and revising paragraphs (a)(7)(iii), (iv) and (b)(9) to read as follows:

§ 1951.911 Preservation loan service programs.

(a) * * *

(7) * * *

(iii) The property will be offered on eligible terms (if the purchaser is eligible in accordance with subpart A of part 1943 of this chapter) and a credit sale processed in accordance with subpart C of part 1955 of this chapter or nonprogram (NP) terms in accordance with subpart J of part 1951 of this chapter. The interest rate will be the current rate set forth in exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(iv) If the purchaser is an eligible applicant (in accordance with subpart A of part 1943 of this chapter) and the value of the property is greater than $200,000, the property may be financed with a $200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with participating credit as set forth in subpart A of part 1943 of this chapter. If the value of the farm property is greater than $200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over $200,000, FmHA may finance the purchase of the property with a credit sale on NP terms in accordance with subpart J of part 1951 of this chapter. A credit sale on eligible terms and the remaining balance on ineligible terms will NOT be made to the same applicant to purchase farm property.

* * * * *

(b) * * *

(9) *Rates and terms for a credit sale.* Terms for a credit sale of Homestead Protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of part 1951 of this chapter.

* * * * *

PART 1955—PROPERTY MANAGEMENT

14. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured By Real Estate and Acquisition of Real and Chattel Property

15. Section 1955.2 is amended by revising the last sentence to read as follows:

§ 1955.2 Policy.

* * * Nonprogram loan borrowers will be liquidated as provided in subpart J of part 1951 of this chapter, unless specifically referenced in this subpart.

Subpart C—Disposal of Inventory Property

16. Section 1955.101 is amended by adding a sentence at the end of the section to read as follows:

§ 1955.101 Purpose.

* * * The sale of inventory property to nonprogram (NP) purchasers will be handled in accordance with subpart J of part 1951 of this chapter, except Community and Business Programs and Multi-Family Housing which will be handled in accordance with this subpart.

17. Section 1955.107 is amended by revising the third sentence of paragraph (e)(2) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

* * * * *

(e) * * *

(2) * * * Any credit sale of a suitable farm larger than a family size farm would be at ineligible rates and terms, in accordance with subpart J of part 1951 of this chapter. * * *

18. Section 1951.108 is amended by revising paragraph (a) to read as follows:

§ 1951.108 Sale of surplus property (CONACT).

* * * * *

(a) *Rates and terms.* Rates and terms for Homestead Protection and Leaseback/Buyback will be in accordance with subpart S of part 1951 of this chapter. Except for Business and Industrial and Community Program properties, all surplus property will be offered for cash or on ineligible terms in accordance with subpart J of part 1951 of this chapter. Business and Industrial and Community Program surplus property will be offered for cash or on ineligible terms of not less than ten percent (10%) downpayment with the remaining balance amortized over a period not to exceed 25 years. The State Director will determine the loan terms for surplus property within these limitations. The interest rate for Business and Industrial property will be the established insured B&I rate for profit corporations plus ½ percent; the Community Programs interest rate will be the current market rate for Community Programs. A credit sale will be closed at the interest rate in effect at the time the credit sale was approved. At the request of the State Director, the Administrator may permit more favorable rates and terms on surplus property offered for sale where extensive sales efforts have been made but no acceptable offer has been received. A credit sale on ineligible terms will be identified as an NP loan.

* * * * *

19. Section 1955.109 is amended by revising paragraphs (a), (c), (h) and (i) to read as follows:

§ 1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431–2, "Farm and Home Plan," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on NP terms, except for C&BP, will be handled in accordance with subpart J of part 1951 of this chapter. For C&BP, information will be provided which is similar to an application including financial information required for the respective loan program to establish financial stability, creditworthiness and repayment ability.

* * * * *

(c) *Form of payment.* Payments at closing will be in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to FmHA and handled in accordance with subpart B of part 1951 of this chapter.

* * * * *

(h) *Classification.* Credit sales on ineligible terms for C&BP will be classified as NP loans and serviced accordingly.

(i) *State supplements.* A State supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser for C&BP will be issued with the advice and approval of OGC.

20. Section 1955.114 is amended by revising the second sentence in paragraph (a)(5) to read as follows:

§ 1955.114 Sales steps for program property (housing).

* * * * *

(a) * * *

(5) * * * Cash sales will be handled in accordance with § 1955.118 of this subpart and credit sales on NP terms will be made in accordance with subpart J of part 1951 of this chapter.

* * * * *

21. Section 1955.115 is amended by revising the first sentence of the introductory text of paragraph (a) to read as follows:

§ 1955.115 Sales steps for nonprogram (NP) property (housing).

* * * * *

(a) *Single family housing.* Sales steps will be the same as for program properties as provided in § 1955.114(a) of this subpart, except that sales must be for cash in accordance with § 1955.118 or credit on NP terms as provided in subpart J of part 1951 of this chapter. * * *

* * * * *

22. Section 1955.118 is amended by revising the heading and paragraphs (d), (e), (f), (h)(3) and (j) to read as follows:

§ 1955.118 Processing cash sales or MFH credit sales on NP terms.

* * * * *

(d) *Downpayment.* A downpayment of not less than 10 percent of the purchase price is required at closing and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office).

(e) *Interest rate.* The section 515 RRH interest rate plus ½ percent will be charged on all types of housing credit sales, except SFH. Refer to exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for interest rates. Loans made on NP terms will be closed at the interest rate which was in effect at the time the loan was approved.

(f) *Term of note.* The note amount will be amortized over a period not to exceed 10 years. If the State Director determines more favorable terms are necessary to facilitate the sale the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

* * * * *

(h) * * *

* * * * *

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions for all MFH sales.

* * * * *

(j) *Classification.* MFH credit sales on NP terms will be classified as NP loans and serviced accordingly.

23. Section 1955.119 is amended by adding a sentence at the end of the section to read as follows:

§ 1955.119 Payment of points (housing).

* * * These payments will be handled in accordance with FmHA Instruction 1951–B (available in any FmHA office).

24. Section 1955.123 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. (*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.) Credit sales to NP purchasers will be in accordance with subpart J of part 1951 of this chapter. For Farmer Programs, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of FmHA Instruction 1901–A (available in any FmHA office). The determination of eligibility of applicants or eligible applicants that have their application disapproved will be notified of the opportunity to appeal in accordance with subpart B of part 1900 of this chapter.

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in excess of $500) made payable to FmHA. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. Payments will be handled in accordance with FmHA Instruction 1951–B (available in any FmHA office). If full payment is not received at the time of sale, the offer will be documented by Form FmHA 1955–45 and where the chattel is sold jointly with real estate by regular sale.

* * * * *

PART 1962—PERSONAL PROPERTY

25. The authority citation for part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

26. Section 1962.1 is amended by adding a sentence to the end of the text to read as follows:

§ 1962.1 Purpose.

* * * Security servicing for nonprogram (NP) loan(s) on farm property will be according to subpart J of part 1951 of this chapter.

27. Section 1962.34 is amended by removing paragraphs (b)(3)(i) and (b)(3)(ii) and revising the last phrase of paragraph (b)(3) which begins with the words "Interest rates" to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(b) * * *

(3) * * * The nonprogram (NP) farmer program interest rate for chattel property, in effect at the time of loan approval, will be charged.

* * * * * * *

PART 1965—REAL PROPERTY

28. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

29. Section 1965.1 is revised to read as follows:

§ 1965.1 Purpose.

This subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests

and certain note-only cases for Farmers Home Administration (FmHA) Farmer Program loans. Security servicing for borrowers who have both FmHA Farmer Program and Single Family Housing (excluding Technical Assistance Grants and Site loans) (SFH) loans, will be according to this subpart. Security servicing for borrowers who are indebted for SFH loans only, will be according to subpart C of part 1965 of this chapter. Security servicing for nonprogram (NP) loan(s) on farm real estate and chattel property will be according to subpart J of part 1951 of this chapter. Security servicing for borrowers who have both a Farmer Program and NP loan will be according to the applicable program regulations. This subpart does not apply to FmHA guaranteed loans, Rural Rental Housing (RRH) loans, Labor Housing (LH) loans, Business and Industrial (B&I) loans, Community Programs (CP) loans, Shift-in-Land-Use (Grazing Association) loans, or loans to Indian Tribes and tribal corporations.

§ 1965.7 [Amended]

30. Section 1965.7 is amended by removing paragraph (i) and redesignating paragraphs (j), (k) and (l) as (i), (j) and (k), respectively.

§ 1965.12 [Amended]

31. Section 1965.12 is amended by removing the first sentence of the introductory text and the last sentence of paragraph (g).

32. Section 1965.13 is amended by revising the first sentence of the introductory text to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

See subpart S of part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. * * * * * * * * *

§ 1965.17 [Amended]

33. Section 1965.17 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

34. Section 1965.26 is amended by redesignating paragraph (a)(1) introductory text as the introductory text to paragraph (a) and revising it and removing paragraph (a)(2); by redesignating paragraph (a)(1) (i), (ii), (iii) and (iv) as paragraphs (a) (1), (2), (3) and (4), respectively; by removing the heading for (e)(4)(i); by removing paragraph (e)(4)(ii) and redesignating paragraph (e)(4)(i) (A), (B), and (C) as (e)(4) (i), (ii), and (iii), respectively; by revising paragraph (f); and redesignating paragraph (g) as (h); by adding a new paragraph (g) and revising the newly designated paragraph (h) to read as follows:

§ 1965.26 Liquidation action.

(a) *Voluntary liquidation.* Before any cash sale, farmer program borrowers must be sent Attachment 1 of exhibit A of subpart S of part 1951 of this chapter. When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be told that liquidation can be accomplished by:

* * * * *

(f) *Cash sales.* When a cash sale of the mortgaged real estate will be insufficient to pay the secured FmHA debt(s), prior lien(s), if any, and authorized selling expenses, paragraph (f)(1) will be followed. In addition to the authorized selling expenses mentioned in paragraph (f)(1)(i), authorized costs can include those specified in § 1965.13 (f)(2) of this subpart. Applicable requirements of subpart G of part 1940 of this chapter must be met.

(1a) *Consent to sale of real estate security when the FmHA debt and authorized selling expenses exceed market value.* If a borrower proposes to sell real estate security for an amount which will be insufficient to pay the FmHA debt, prior lien(s), if any, and authorized selling expenses, an appraisal will be completed by an authorized FmHA employee in accordance with subpart A of part 1809 of this chapter (FmHA Instruction 422.1) and the County Supervisor may consent to the sale if the proposed sale price is not less than the market value. If a qualified FmHA appraiser is not available, the State Director may contract for an appraisal in accordance with FmHA Instruction 2024–A (available in any FmHA office). If a current financial statement is not in the case file, a financial statement on Form FmHA 431–2, "Farm and Home Plan," will be taken to determine if the borrower has the ability to pay all or a substantial portion of the authorized selling expenses taking into account the borrower's moving/relocation expenses and the Government's prospects of acquisition of the property by voluntary conveyance or foreclosure.

(i) *Authorized selling expenses.* Authorized selling expenses are those which the seller customarily or legally must pay to convey title and include but are not limited to: A real estate broker's commission which does not exceed the most typical rate for the sale of similar property in the area, no more than three points to enable the buyer to obtain credit from another lender provided it is customary in the area for the seller to pay points and they are not being paid to reduce the purchase's interest rate, real estate taxes, preparation of the deed, abstract and/or title fees, termite and/or other related inspections, title insurance, surveys, and deed or other revenue stamps. Junior liens may also be settled in the same manner as outlined in § 1955.10(c)(2) of subpart A of part 1955 of this chapter; however, the State Director must approve settlement of the junior lien regardless of the amount.

(ii) *Closing the transaction.* In no case will the borrower (seller) receive any cash proceeds from the sale. Distribution of funds will be as follows:

(A) Where there are sufficient cash proceeds at closing, the entire sale proceeds, minus prior lien(s), if any, and authorized selling expenses must be applied to the FmHA debt.

(B) Where cash proceeds are not available (such as in the case of an assumption) or are insufficient to pay authorized selling expenses, FmHA may pay said expenses necessary to consummate the transaction by preparation of Standard Form 1034, "Public Voucher For Purchases And Services Other Than Personal," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI). Expenses will only be vouchered when the County Supervisor has determined that it is in FmHA's financial interest to pay such selling expenses instead of the prospects of accepting a voluntary conveyance or foreclosure, taking into account the estimated additional costs which would arise were the property to be acquired and sold from inventory. Any real estate taxes due from the transferor and authorized selling expenses for which there are insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing. A subsequent loan may be processed for any equity (market value "as is" minus FmHA indebtedness) in the property and/or the amount of any needed repairs (amount of repairs or the difference between the market value "as-improved" and market value "as-is", whichever is lower). Amounts for seller's equity and/or repairs will not be vouchered and charged to the borrower's account. Authorized selling expenses will not be considered or included in the amount assumed. See Exhibit E of this subpart (available in any FmHA office) for examples on how to determine amounts for vouchers, subsequent loans, and/or assumption agreements.

(iii) *Release of security instruments.* When sale proceeds are insufficient to pay the FmHA debt, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with a State law, a State supplement approved by OGC will prescribe procedures for releasing security instruments when the debt evidenced therein is not satisfied in full.

(iv) *Release from liability.* Release from liability for the deficiency is covered in § 1965.26(g) of this section.

(g) *Release from liability.* In cases where the borrower (and co-signer, if any) is released from liability, and the loan is not being assumed, the note(s) will be stamped "Satisfied For Less Than Indebtedness—Borrower Released From Liability." The County Committee must recommend release of liability before the borrower (and co-signer, if any) can be considered for this action. The following comment will be shown on the County Committee Certification:

In our opinion (*Name of Borrower(s) and co-signer*) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenant incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon completion to the transaction.

(1) The State Director is authorized to approve release of liability when the account balance does not exceed $150,000; otherwise the Administrator or designee will approve the release from liability. All cases requiring a release of liability will be submitted for review in accordance with exhibit A of subpart B of part 1956 of this chapter (available in any FmHA office).

(2) Release from liability will be accomplished by preparing and distributing Form FmHA 1965–8, "Release From Personal Liability."

(h) *Account balance.* When security property is sold for an amount not less than the market value as authorized in § 1965.26 (f)(1) of this subpart or assumption of an amount equal to the market value is approved as authorized in § 1965.27 of this subpart, the account balance will be handled as follows:

(1) When the seller or transferor (and co-signer, if any) is released from liability, the account will be satisfied in the records of the Finance Office when one of the following is processed:

(i) In a sale outside the FmHA program, Form FmHA 1965–8 will be given to the borrower and otherwise distributed in accordance with the Forms Manual Insert.

(ii) Form FmHA 1965–22, "Information On Assumption On New Terms Or Other Change Of Terms," indicating the transferor is released from liability.

(2) When the seller or transferor (and co-signer, if any) is not released from liability, the borrower will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any FmHA office). The County Supervisor will meet with the borrower within 30 days to assist the borrower in the development of a debt settlement offer in accordance with subpart B of part 1956 of this chapter or the account will be reclassified to collection-only.

§ 1965.26 [Amended]

35. Newly redesignated §1965.26 (e)(4)(iii) is amended in the last sentence by changing the reference "(A) or (B)" to read "(i) or (ii)".

36. Section 1965.27 is amended by revising the fifth sentence of the introductory text which begins "If an NP loan . . ."; by removing paragraphs (b)(4) and (d) and redesignating paragraphs (b)(5) through (b)(21) as (b)(4) through (b)(20) and paragraphs (e) and (f) as (d) and (e); by removing the last sentence of paragraph (c)(1)(ii); by revising paragraph (c)(1)(iii)(C); by revising the first sentence of the newly designated paragraph (d); by revising the newly designated paragraph (e); by adding a new paragraph (f); and by revising paragraph (g)(4) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * Sale or transfer with assumption of real estate security on NP terms will be in accordance with subpart J of part 1951 of this chapter. * * *

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(C) On ineligible rates and terms and serviced in accordance with subpart J of part 1951 of this chapter.

* * * * *

(d) *Consent of FmHA not required to transfer.* When the FmHA mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with paragraph (c) of this section or subpart J of part 1951 of this chapter, the Government will not consent to the sale. * * *

(e) *Release of liability.* When all the real estate security is transferred and the total debt is assumed the borrower (and co-signer, if any) will be released from liability by the County Supervisor. Release from liability will be handled in accordance with § 1965.26 (g) when consent under § 1965.26 (f)(1) is given. When a portion of the real estate is transferred and the total SFH debt is assumed, a release may be granted under paragraph (b)(6) of this section provided the transferee is an eligible SFH applicant. When only that portion of the debt equal to the market value of the security is assumed and the borrower is to be released from liability, the transferee must be an eligible SFH applicant in order for the transferor to be released from liability on the RH debt and the conditions in § 1965.26 (g) must be met. If the transferee of the SFH debt is not an eligible RH applicant, any proposed release of the transferor from liability must be submitted to the National Office. For a SFH loan involving a co-signer, the transferor may be released from liability only if the co-signer also can be released (see § 1965.129 of subpart C of this part). The official approving the transfer of SFH loans must also execute a memorandum containing the statement in § 1965.26 (g), normally signed by the County Committee.

(f) *Account balance.* Account balances will be handled in accordance with § 1965.26 (h) of this subpart.

(g) * * *

(4) *Farm Home plans and financial statements.* When an assumption will be for less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of the transferor will be obtained on Forms FmHA 1944–3 or FmHA 431–2 or other plan of operation acceptable to FmHA.

* * * * *

§ 1965.27 [Amended]

37. Section 1965.27(b)(3) is amended in the second sentence by changing the reference "§ 1965.26(a)(2)" to read "§ 1965.26(f)(1)."

38. Section 1965.27(g)(6)(ii) is amended by removing the words "or (d)" and by changing the reference "paragraph (f)" to read "paragraph (e)."

39. Section 1965.27(h)(2)(ii) is amended in the second sentence by changing the reference "paragraph (f)" to read "Paragraph (e)."

§ 1965.34 [Removed and Reserved]

40. Section 1965.34 is removed and reserved.

41. Exhibit E is added to part 1965, subpart A as follows:

Exhibit E—Examples of How To Determine the Amounts of Vouchers and/or Assumption When Consent To Sale Is Authorized Under [6] 1965.27(b)(3) for farm real estate.

Note.—Exhibit E, referenced in this subpart, is available in any FmHA office.

Subpart C—Security Serving for Single Family Rural Housing Loans

42. Section 1965.101 is amended by adding a sentence at the end of paragraph to read as follows:

§ 1965.101 Purpose.

* * * Security servicing for nonprogram (NP) loan(s) on a single family residence will be according to subpart J of part 1951 of this chapter.

43. Section 1965.104 is amended by revising the last sentence of paragraph (c)(2) to read as follows:

§ 1965.104 Preservation of security and protection of liens.

* * * * *

(c) * * *

(2) *Junior lien foreclosure.* * * * When a junior lienholder foreclosure does not result in payment in full of the FmHA debt but the property is sold subject to the FmHA lien, the account may be assumed by the purchaser on program terms subject to the provisions of § 1965.126(c) of NP terms as provided in subpart J of part 1951 of this chapter; otherwise the FmHA loan will be liquidated.

* * * * *

§ 1965.105 [Amended]

44. Section 1965.105(b)(1) is amended in the first sentence by changing the reference "paragraph (e)" to read "paragraph (d)."

45. Section 1965.105 is amended by removing paragraph (d) and redesignating paragraph (e) as (d).

46. Section 1965.125 is amended by removing paragraph (a)(3); and by redesignating (a)(2)(iii) as (a)(2)(iv); adding a new (a)(2)(iii); revising (a)(2)(ii)(B) and the newly designated (a)(2)(iv) to read as follows:

§ 1965.125 Liquidation.

(a) * * *

(2) * * *

(ii) *Closing the transaction.* * * *

(A) * * *

(B) Where cash proceeds are not available (such as in the case of an assumption) or are insufficient to pay authorized selling expenses, FmHA may pay said expenses necessary to consummate the transaction by preparation of Standard Form 1034, "Public Voucher For Purchases And Expenses Other Than Personal," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI). Expenses will only be vouchered when the County Supervisor has determined that it is in FmHA's financial interest to pay such selling expenses instead of the prospects of accepting a voluntary conveyance or foreclosure, taking into account the estimated additional costs which would arise were the property to be acquired and sold from inventory. Any real estate taxes due from the transferor and authorized selling expenses for which there are insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing. A subsequent loan will be processed for any equity (market value "as-is" minus FmHA indebtedness) in the property and/or the amount of any needed repairs (amount of repairs or the difference between the market value "as-improved and market value "as-is", whichever is lower). Amounts for the seller's equity and/or repairs will not be vouchered and charged to the borrower's account. Authorized selling expenses will not be considered or included in the amount assumed. See exhibit C of this subpart (available in any FmHA office) for examples on how to determine amounts for vouchers, subsequent loans, and/or assumption agreements.

(iii) *Release of security instruments.* When sale proceeds are insufficient to pay the FmHA debt, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with a State law, a State supplement approved by OGC will prescribe procedures for releasing security instruments when the debt evidenced therein is not satisfied in full.

(iv) *Release from liability.* Release of the borrower from liability for the deficiency is covered in § 1965.127(a) (3) and (b) of this subpart. In cases where the borrower is released from liability, and the loan is not being assumed, the note(s) will be stamped "Satisfied For Less Than Indebtedness—Borrower Released From Liability."

* * * * *

47. Section 1965.126 is amended by revising the introductory text; by removing paragraph (d) and redesignating paragraphs (e) and (f) as (d) and (e); by revising the last phase of the introductory paragraph (b)(1) which begins "The following loans . . ."; by revising paragraph (b)(3); and by revising the second sentence of introductory paragraph (b)(4)(ii) to read as follows:

§ 1965.126 Transfer of property with assumption of indebtedness.

When a borrower proposes to sell real estate security, assumption of the loan(s) may be approved on program or nonprogram (NP) terms, as applicable. Approval on program terms will be subject to the provisions of paragraph (c) of this section and NP terms will be as provided in Subpart J of Part 1951 of this chapter. Assumptions under paragraphs (b)(12) and (c)(2) of this section only are authorized on existing terms without considering the assuming party's eligibility for program assistance. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA account is not assumed by the purchaser (or new owner), the loan must be liquidated except as provided in paragraph (b)(12) of this section or § 1965.116 of this subpart.

* * * * *

(b) * * *

(1) *Loan classification and/or changes.* * * * The following loans may be assumed on program terms under paragraph (c) of this section or NP terms in accordance with subpart J of part 1951 of this chapter:

* * * * *

(3) *Dwelling situated on more than a minimum-adequate site.* If the property to be transferred with assumption consists of a dwelling on more than a minimum-adequate site as defined in subpart A of part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum-adequate site for another dwelling. It is not intended to exclude a property currently in the program from being transferred to a program applicant simply because it is situated on more than a minimum-adequate site. Consideration must be given to such things as local zoning requirements, road or street access, and marketability of portions separately if subdivided. If it is determined that the excess property cannot be sold separately as a minimum-adequate site for another dwelling, the facts must be documented and the property may be retained in the SFH program, provided the entire property is modest in cost compared to a similar house on a minimum-adequate site in the area. When all of the security property is not being transferred to the party assuming the FmHA debt and the balance of the FmHA debt is not paid in full when the assumption is closed, the

remaining debt of the transferor will be reamortized in accordance with subpart G of part 1951 of this chapter. OGC will be requested to advise how to retain the appropriate security interest on each portion of the security property. When the balance of the transferor's debt is paid, or when only a portion of the security property was transferred which adequately secures the debt assumed by the transferee, and it is necessary to release the remaining portion of the security property, OGC will be requested to prepare the release document.

(4) * * *

(ii) * * * In those instances, assumption may only be on NP terms in accordance with subpart J of part 1951 of this chapter. * * *

* * * * * *

Dated: June 21, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-19103 Filed 8-16-89; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1956

Debt Settlement; Community and Business Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) is proposing to amend the Agency's policies and procedures governing the debt settlement of loans serviced by the Community Program and Business and Industry Division. The proposed rule is necessary to comply with section 1309 of the Food Security Act of 1985, Public Law (Pub. L.) 99-198. This proposed action is needed to clarify debt settlement regulations and to include the process of settlement of debts where FmHA does not have the independent statutory authority to settle debt, and must process debt settlement in accordance to the Federal Claims Collection Act Joint Standards. The intended effect is to make FmHA regulations on debt settlement coherent and more responsive to the needs of the agency and the public.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Blanche G. Hamilton, Loan Officer, Loan Servicing Branch, Business and Industry Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6343, South Agriculture Building, Washington, DC 20250; telephone (202) 475-3802.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor. The proposed action is not likely to result in any of the following: (a) An annual effect on the economy of $100 million or more, (b) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

Environmental Impact

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190; an Environmental Impact Statement is not required.

Intergovernmental Review

The proposed action affects the following FmHA programs listed in the Catalog of Federal Domestic Assistance:

Sec.

10.414 Resource, Conservation and Development Loans.

10.418 Water and Waste Disposal Systems for Rural Communities.

10.419 Watershed and Flood Prevention Loans.

10.421 Indian Tribes and Tribal Corporations.

10.422 Business and Industry Loans.

10.423 Community Facility Loans.

10.424 Industrial Development Grants

10.434 Nonprofit National Corporation Loan and Grant

10.438 Intermediary Relending Program Loans

All of the above programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, except Indian Tribes and Tribal Corporations.

Regulatory Flexibility Act

FmHA has determined that this action will not have a significant economic impact on a substantial number of small entities, because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Background

Debt settlement for Community and Business Programs is governed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921-1196). Additionally, FmHA, C&BP administers numerous programs which are not governed by the CONACT and, therefore, does not have the independent statutory authority to settle debt and must process debt in accordance with the Federal Claims Collection Standards, 4 CFR parts 101 through 105. These debts include Economic Opportunity Cooperative Loans, claims against third party converters, non program loans, Industrial Development Grants, Rural Development Loan Fund Loans, Intermediary Relending Program Loans, Nonprofit National Corporation Loan and Grant Program debts, and 601 Energy Impact Assistance Grants.

The proposed action will amend the present regulations to clarify which programs will settle debt in accordance with the Federal Claims Collection Standards and the procedure to be used to comply with the Standards. The changes will result in more efficient service to the public, while continuing protection of the Government's interest.

List of Subjects in 7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations, to read as follows:

PART 1956—DEBT SETTLEMENT

1. The authority citation for Part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 31 U.S.C. 3711, 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Debt Settlement—Community and Business Programs

2. Section 1956.101 is revised to read as follows:

§ 1956.101 Purpose.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Water and Waste Disposal System loans; Community Facility loans; Association Recreation loans, Watershed loans and advances; Resource, Conservation and Development loans; Rural Renewal loans; and insured Business and Industry loans; Irrigation and Drainage loans; Shift-in-land-use loans and Indian Tribal Land Acquisition loans. Settlement of Economic Opportunity Cooperative Loans, Claims Against Third Party Converters, Nonprogram Loans, Industrial Development Grants, Rural Development Loan Fund Loans, Intermediary Relending Program Loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants, is not authorized under independent statutory authority and settlement under these programs is handled pursuant to the Federal Claims Collection Standards, 4 CFR Parts 101–105 as described in § 1956.147 of this subpart.

3. Section 1956.147 is added to read as follows:

§ 1956.147 Debt Settlement under the Federal Claims Collection Act.

The U.S. Department of Justice (DOJ) and the General Accounting Office are charged with the responsibility for implementing the Federal Claims Collection Act and have promulgated the Federal Claims Collection Act Joint Standards (FCCAJS) (4 CFR parts 101–105) to inform Government Agencies on how to settle debts and claims which the Agency does not have independent statutory authority to settle. With the exception of loans and claims with outstanding balances of $20,000 or less, exclusive of interest, penalties, and administrative costs, settlements must be submitted to and approved by the United States Attorney or the DOJ. Debt Settlement of Economic Opportunity Cooperative Loans, Claims Against Third Party Converters, Nonprogram Loans, Industrial Development Grants, Rural Development Loan Fund Loans, Intermediary Relending Program Loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants are programs that must be settled under the FCCAJS.

(a) Debt settlement of the subject loans and claims falls in the following categories:

(1) Settlement of loans and claims may be approved by the Administrator when the outstanding balance of the indebtedness involved in the settlement is $20,000 or less, exclusive of interest, penalties, and administrative costs. These loans and claims will be submitted to the National Office of Form FmHA 1956–1, "Application for Settlement of Indebtendness," for debt settlement. Subsequent to approval, Form FmHA 1956–1 will be distributed in accordance with the Forms Manual Insert (FMI).

(2) Loans and claims with an outstanding balance of $200,000 or less inclusive of interest, penalties, and administrative costs, but with an outstanding balance greater than $20,000, exclusive of interest, penalties, and administrative costs, after approval by the State Director will be referred to your Regional Office of the General Counsel (OGC) for referral to the United States Attorney in whose judicial district the debtor can be found. The form to be used is the Claims Collection litigation Report (CCLR). This form should be available through the U.S. Attorney. A memorandum from the State Dirctor should be attached to the CCLR recommending acceptance of the debt settlement. If the State Director after reviewing the CCLR does not recommend acceptance, the State Director has the authority to reject the debt settlement.

(3) Loans and claims with an outstanding balance over $200,000, inclusive of interest, penalties, and administrative costs, will be referred to the Administrator and will include the following:

(i) The case file(s).
(ii) A completed CCLR.
(iii) Copies of the notes, security agreements, and mortgages.
(iv) A current appraisal of any security owned by the borrower.
(v) A narrative which will include:
(A) Recommendation for the acceptance of the debt settlement.
(B) Why the borrower failed.
(C) Steps taken to collect the loan(s).
(D) An analysis of the debtor's future repayment ability.
(E) Why acceptance of the debt settlement offer is in the best interest of the Government.

If the Administrator concurs with the recommendation for the debt settlement, it will be referred to the FmHA National Office OGC for referral to the Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

(b) When a debtor has a Community Programs or Business and Industry loans(s) as defined in this subpart, these loan(s) will be debt settled under the authority of the Consolidated Farm and Rural Development Act. In such cases, the subject loans and claims should be listed under part II(B) on Form FmHA 1956–1, as other debts owed FmHA. Normally, all the security for the subject loans and claims should be disposed of prior to the submission for debt settlement.

(c) It is not necessary to obtain approval of the United States Attorney of the DOJ (as the case may be) in cases where FmHA decides not to settle a loan or claim.

Dated: July 26, 1989.

Neal Sox Johnson,

Acting Adminstrator, Farmers Home Administration.

[FR Doc. 89–19275 Filed 8–16–89; 8:45am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 88–216]

Change in Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations by adding Chile to the list of countries declared to be free of rinderpest and foot-and-mouth disease. No outbreaks of rinderpest have ever occurred in Chile, and we have determined that foot-and-mouth disease has been eradicated there. We are also proposing to add Chile to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of their meat and other animal products into the United States. This proposed revision would relieve certain prohibitions and restrictions on the importation into the United States, from Chile, of ruminants and swine, and fresh, chilled, and frozen meats of these animals.

However, Chile is not included in the lists of countries declared to be free of hog cholera and swine vesicular disease. Therefore, even if this proposal is adopted, the restrictions imposed on the importation of swine because of these diseases would remain in effect for Chile.

DATE: Consideration will be given only to comments received on or before October 16, 1989.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development,

PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88–216. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) regulate, among other things, the importation into the United States of certain animals, meat, and other animal products. These regulations are designed, among other things, to prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, swine vesicular disease, and viscerotropic velogenic Newcastle disease.

Section 94.1(a)(1) of the regulations provides notice that rinderpest or foot-and-mouth disease exist in all countries of the world, except those listed in § 94.1(a)(2), which are declared to be free of these diseases. We are proposing to add Chile to this list.

Rinderpest has never existed in Chile, and the last outbreak of foot-and-mouth disease was eradicated there in August 1987. Since that time, no outbreaks of foot-and-mouth disease have been discovered in Chile by animal health officials there. In addition, Chile has adequate controls to prevent the introduction and spread of rinderpest and foot-and-mouth disease.

We declare a country to be free of rinderpest and foot-and-mouth disease if there have been no cases of these diseases reported there for the previous 1-year period. Based on the information submitted to us by Chile's animal health authorities, we have concluded that Chile qualifies for listing in § 94.1(a)(2) of the regulations as a country declared to be free of rinderpest and foot-and-mouth disease.

Special Restrictions

We also propose to add Chile to the list in § 94.11(a) of countries free of rinderpest and foot-and-mouth disease that are subject to special restrictions on the importation of their meat and other animal products into the United States. The countries listed in § 94.11(a) are subject to these special restrictions because they (1) supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries in which rinderpest or foot-and-mouth disease exists; or (2) have a common land border with countries in which rinderpest or foot-and-mouth disease exists; or (3) import ruminants or swine from countries in which rinderpest or foot-and-mouth disease exists under conditions less restrictive than would be acceptable for importation into the United States.

Chile has a common land border with Peru, Bolivia, and Argentina, which are designated in § 94.1(a)(1) as countries in which rinderpest or foot-and-mouth disease exists. In addition, Chile imports live ruminants and swine from countries not recognized as free of foot-and-mouth disease under conditions less restrictive than would be acceptable for importation into the United States. Further, Chile supplements its national meat supply by the importation of fresh, chilled, and frozen meat of ruminants and swine from countries designated in § 94.1(a)(1) as countries in which rinderpest or foot-and-mouth disease exists. Thus, even though we propose to designate Chile as free of rinderpest and foot-and-mouth disease, the meat and other animal products produced in Chile may be commingled with the meat and other animal products from a country in which rinderpest or foot-and-mouth disease exists, resulting in an undue risk of introducing rinderpest or foot-and-mouth disease into the United States.

Therefore, we are proposing that meat and other animal products of ruminants and swine, and the ship stores, airplane meals, and baggage containing these meat or animal products imported into the United States from Chile be subject to the restrictions specified in § 94.11 of the regulations.

Restrictions on Swine, Pork or Pork Products

Because Chile is not recognized as being free of hog cholera and swine vesicular disease, swine and pork or pork products offered for importation into the United States from Chile would continue to be subject to the prohibitions and restrictions imposed in Part 94 because of those diseases.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect that the amount of cattle, sheep and other ruminants, except for llamas and alpacas, imported from Chile as a result of this proposed rule would be negligible. We also expect that the amount of fresh, chilled, or frozen meats of ruminants imported from Chile as a result of this proposed rule would be negligible.

During the previous periods when Chile was recognized as being free of foot-and-mouth disease, no cattle, sheep, or goats, or fresh, chilled, or frozen meats obtained from these animals were imported from Chile. Further, there is little or no demand in the United States for these animals or products from Chile. This proposed rule would therefore have little or no impact on the small entities in the United States that deal with these products.

There is a demand in the United States for llamas and alpacas. These animals have attained a great deal of popularity during the last several years. The main impact of this proposed rule would be to increase the number of llamas and alpacas imported from Chile. This would have an economic impact on those entities in the United States who import these animals for financial gain. Most of these entities are small ones.

Currently, llamas and alpacas to be entered into the United States from Chile must undergo an embarkation quarantine prior to entry into the United States, as well as a 90-day quarantine at the Harry S Truman Animal Import Center in Florida. No facility other than the Harry S Truman Animal Import Center can be used to import llamas and alpacas into the United States from Chile. Due to the quarantine costs and the logistical problems associated with importations through the Harry S Truman Animal Import Center, the number of llamas and alpacas imported has not been sufficient to satisfy the demand for these animals in the United States.

If we add Chile to the list of countries declared to be free of rinderpest and foot-and-mouth disease, then llamas and alpacas would be allowed to be quarantined at any one of USDA's other

animal import centers, making importations easier.

In addition, USDA veterinarians would no longer be required to supervise the isolation and testing of these animals prior to arrival of the animals in the United States. These functions would be performed, instead, by Chilean veterinary officials. This change would eliminate the cost of paying USDA for its supervision services prior to arrival of the animals in the United States, thus reducing importation costs for importers.

These factors would make it possible for importers to import and sell more llamas and alpacas then they have in the past.

Thousands of animal importers do business in the United States. We are aware of only 228 who have expressed an interest in importing llamas and alpacas from Chile. Approximately 10 of these are large operations; the remainder are small entities. These entities would benefit economically should our proposed rule go into effect, but these economic benefits would be diffused by several factors.

First, the quarantine space available at various import locations in the United States would allow only approximately 1,600 llamas and alpacas to be imported from Chile during the first year following the effective date of the rule.

Second, it is unlikely that this many llamas and alpacas would be imported from Chile into the United States, since a number of other countries are also interested in obtaining these animals. We therefore estimate that no more than 1,200 llamas and alpacas would be available for export from Chile to the United States in any one year.

Third, we expect that most of the llamas and alpacas imported during the first several years would be kept by importers for breeding purposes, and not sold for immediate financial gain.

Fourth, we expect that the scarcity and value of these animals in the United States would diminish steadily as more and more are imported from Chile and other countries.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this proposal contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding "Chile," immediately after "Channel Islands,".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) would be amended by adding "Chile," immediately after "Channel Islands,".

Done in Washington, DC, this 14th day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-19345 Filed 8-16-89; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 309, 310 and 318

[Docket No. 88-022N]

Rapid Analytical, Diagnostic, and Microbiological Test Approvals

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advanced Notice of Policy and Proposed Rulemaking; Request for Comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is establishing a formal process and general criteria for reviewing and approving rapid analytical, diagnostic and microbiological tests. The purpose of these formal procedures is to expedite the Agency's test review and approval process without compromising scientific standards. The Agency is requesting specific comments on the review process and on the test information and criteria to be used for evaluting tests for approval.

DATE: Comments must be received on or before: November 15, 1989.

ADDRESS: Written comments should be submitted to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.).

FOR FURTHER INFORMATION CONTACT: Dr. David Berkowitz, Director, Technology Transfer and Assessment Staff, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447-8623.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit written comments concerning this notice. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Dr. David Berkowitz so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

On March 30, 1988, a task force was established by the Administrator, FSIS, to study how FSIS currently reviews and approves rapid analytical diagnostic, and microbiological tests, and to make recommendations to improve the process.

Currently, there is no established formal procedure for reviewing and approving tests in FSIS. Each test is reviewed on an individual basis by the appropriate Agency division. Under this procedure, there is a potential for

duplicating some efforts of other government agencies and for applying nonuniform criteria.

The task force recommended that the Agency establish a formal process to review testing systems submitted for approval. The task force also recommended that the Agency establish review and approval criteria for tests.

New developments, particularly in biotechnology, have made tests available that allow for diagnostic and residue testing in slaughter plants and on farms. As part of the Agency's effort to incorporate scientific tests, FSIS would like to continue to integrate these new technologies into the inspection process. The Agency wants to encourage the development of rapid tests suitable for regulatory screening, and to facilitate the test review and aproval process for such testing systems without compromising scientific standards.

The proposed test review and approval process is discussed below in terms of organizational structure, review process, and information required for review and approval. The final sections discuss proprietary information, approval by other agencies, markets for tests, expiration of approvals, redundant applications, and false statements. Comments are solicited on any or all of these points.

Organizational Structure

The Deputy Administrator for Technical Services would have the responsibility for the entire test review and approval process. All official decisions on tests would be communicated to the applicant by the Deputy Administrator. The review process would be coordinated by the Technology Transfer and Assessment Staff, a part of Technical Services. The director of Technology Transfer and Assessment would be the Coordinator for the test review process.

The organizational structure for the test review process would include a Coordinator, a Test Review Steering Committee, and Techical Reviewers. The Coordinator would oversee the operations of the review process and would serve as the executive secretariat to the Test Review Steering Committee. The Coordinator would be responsible for gathering, organizing, and assessing any information required for the review process, making recommendations to the Steering Committee, and to the Deputy Administrator, and assuring that all participants in the review of a test are informed and have access to the required information. The Coordinator would also be responsible for the exchange of information between FSIS and the applicant and between FSIS and other agencies when concurrent reviews are necessary.

The Test Review Steering Committee would consider the Agency priority of proposed tests, safety and policy questions related to the test results, and would be advisory to the Deputy Administrator who would chair the committee. The permanent members would include representatives from the Meat and Poultry Inspection Operations and Science programs and the Test Review Coordinator. Additional people with special expertise would be asked to participate as *ad hoc* members as required by the circumstances related to the test being considered.

A Technical Reviewer would be appointed by the Coordinator for each test reviewed. The Technical Reviewer would assemble a committee of subject matter experts, including a statistician, to review the technical performance of the test. The Technical Reviewer would make formal written recommendations to the Coordinator.

The Review Process

The FSIS review and approval process would have four major milestones. The first would be the Deputy Administrator's decision to review the test. The second would be the approval of the report on the laboratory performance of the test by the Coordinator. The third would be the acceptance of the collaborative study by the Coordinator, and the fourth would be the final consideration by the Steering Committee and the decision by the Deputy Administrator to approve the test. Applicants would be required to contact the Coordinator to prepare for each milestone. The laboratory performance phase of the test would have to be acceptable before the collaborative study is initiated.

When a test application is received, the Coordinator would refer the application to the Test Review Steering Committee for an evaluation of Agency interest. The Steering Committee would make a recommendation to the Deputy Administrator. If the test is not likely to be incorporated into Agency programs in the future, the Deputy Administrator would return the application to the sender. If there is Agency interest, the Deputy Administrator would inform the applicant, and the Coordinator would send the application to a Technical Reviewer. The Agency intends to complete this first phase of the process within 60 days of the receipt of the application.

A Technical Reviewer may be in FSIS, in another Agency, or in a non-government organization. The Technical Reviewer would review the submitted material with the committee of experts and, based on the criteria for test performance, make a recommendation to the Coordinator for or against test approval. The Coordinator would take into consideration the recommendation of the Technical Reviewer as well as other information assembled for the Steering Committee and recommend approval or non-approval of the test to the Committee. The Steering Committee would consider factors such as human safety, Agency policy, and the availability of money and personnel. After consulting with the Steering Committee, the Deputy Administrator would approve or reject the test, and inform the applicant of the decision.

Information Required for Review and Approval

The Agency is eager to apply new technologies to improve food safety in the inspection program. The rate at which FSIS can do this is limited by the availability of money and staff, forcing FSIS to ignore many excellent tests simply because they are not among the Agency's highest priorities. Resources will not be committed to the review of testing systems unless they are likely to be used as a basis for Agency regulatory decisions; e.g., the results of the test will be used to retain product or to grant special status to a group of animals. Tests unlikely to be incorporated into regulatory programs in the foreseeable future will not be reviewed. This decision reflects the legal restriction on the Agency that permits expenditures only for the conduct of the meat and poultry inspection program.

To approve a test, FSIS must have a high level of assurance that the test will measure what it is expected to measure and will perform as described. Agency approval of a test must mean that the test results can be used as a basis for Agency decisionmaking, when the quality control and quality assurance measures are part of the test and when the test is performed by trained analysts. This document describes the general kinds of information that would be required in an application for this assurance and the format for applications. The Technical Reviewer would provide more detailed criteria for each specific test. The Reviewer and Coordinator would consult on special problems, and to be certain that the criteria for any given test are in line with the criteria for similar tests.

The Agency would require a clear, well-organized, and thorough presentation of the information for review. Applications for test approval

would have to be prepared in the format of a scientific paper. (Those who have published or are planning to publish their work could submit the manuscript or a reprint. The additional information which would be required by FSIS, of the type not likely to be included in a paper for publication, could be attached as an appendix.) The scope of the information proposed to be required by FSIS is outlined below in the order in which it would usually appear in a scientific paper. This is followed by a list of the information FSIS would need that is not likely to be included in the usual scientific paper describing a test.

The application should begin with summary statements about the purpose of the test, the matrices, the intended species, the potential uses, and the significance of the test. The principle on which the assay is based, the unique features of the assay and characteristic parameters such as lowest limit of detection, limit of reliable measurement, a measure of the precision or, for "yes/no" tests, false positive and false negative rates should be given.

More detailed introductory statements should provide a framework for evaluating the test. The problem the test was designed to solve should be described. The applicant should explain the advantage of this test over other tests and technologies currently available.

The second section should describe the equipment, reagents, and the method with enough details so that a peer could repeat the work without recourse to the authors. The preparation or sources of reagents and equipment would have to be described. The properties of equipment or complex reagents, the criteria which make them acceptable, the workable operating temperature range, and the stability and shelf-life for reagents, standards, and media would also have to be described.

The third section would present laboratory data describing the characteristics of the test. Using the intended matrix, the data should include a representative plot of the test response versus the concentration of analyte, including standard deviations, across the range of interest. For nonquantitative screening tests, points slightly above and below the decision points are especially important and should have more replicates. For quantitative assays, concentrations near the tolerance or other decision points should also be stressed. Whenever possible, the test response versus concentration curve should be directly compared with the curve produced by an existing accepted method. The values given in the summary would have to be supported with data. The laboratory characterization would also include analyses of samples taken from the field. Field samples may reveal problems with an analytical method that can only be discovered by gathering information from the targeted test population. Where insufficient field samples are available, animals should be experimentally treated (administered drugs or chemicals or be experimentally infected with pathogens) to approximate the field situation.

The results of a designed ruggedness test would be presented as part of the test description. Special attention should be given to likely interferences such as dust or temperature conditions likely to be encountered in the environment of the intended use of the test.

Specificity is a major concern. The potential for detecting compounds other than the compound of interest should be tested. Special emphasis would be given to those compounds likely to be present, for example, closely related metabolites, antigens, or other substances. The specificity of serological tests is usually established by examining test performance on panels of known positive and negative sera. Criteria for the selection of panels of serum for establishing the false negative and false positive rates of serological tests should be presented. The composition of the test panel should be related to what is known about the composition of the targeted test population.

The applicants should assume that the submitted material would be reviewed by people who have no prior knowledge of the assay. The data should be clearly presented so the reviewers have the opportunity to reach the same conclusions as the applicant. The reviewers should not have to make assumptions about what was done or what the units of measurement are. All tables and graphs should have numbers, titles, and legends. Tables, graphs, and figures would have to be able to stand alone. The inclusion of copies of key references will facilitate the review process. The applicant would be asked to provide raw data for particular experiments if the Technical Reviewer considers it helpful.

The discussion should interpret the results, relate them to the intended purpose of the test, to previous methods, and to current literature on the same technology. Logical implications for the extension of the testing system to other applications or suggestions for improvements would be helpful.

FSIS would require additional information that may not be included in a scientific publication in sufficient detail. Some of these kinds of information are discussed below.

Approval would require a detailed presentation of the planned FSIS use of the test. This would be worked out with the Coordinator (who would consult with the Steering Committee) and be described with supporting reasoning for the agreed-upon plan. If FSIS personnel are to purchase and use the test, the plan would have to include estimates of the cost per test at various levels of usage as well as the initial and maintenance costs of equipment and reagents. The applicant would have to assure a 1-year supply of special reagents such as standard sera or antibodies. This supply would have to be estimated from projections of the proposed use of the test. The proposal should identify the employment categories of those who would carry out the test, the frequency at which testing must be done, and the action required by positive and negative tests.

Complete protocols written in a form understandable to the proposed test users would have to be part of the package. If the test is to be performed by non-FSIS personnel, plans for analyst training and certification would have to be described. The need for strict protocol adherence would have to be emphasized. In all cases, adequate directions for the conduct of the test must be provided. If the test is to be performed by farm personnel, inspectors, or others not previously familiar with analytical techniques, extensively illustrated directions may be helpful. This test information would be required in considerably more detail than would be required for laboratory personnel.

Any testing system would have to include quality control (QC) and quality assurance (QA) plans so the Agency can be confident that the system is performing as intended. QA/QC programs would be required for kit and reagent production as well as for the testing process itself.

The final data-collection step in the approval process would be a collaborative study. The Agency defines collaborative study as a procedure to verify test performance characteristics using a representative group of analysts and test locations. The results of the collaborative study would be used as a measure of accuracy and bias, precision (reproducibility and repeatability), and the completeness of the test. Completeness is the percentage of data actually collected relative to the total amount of data planned, i.e., a 100 percent complete test has no outliers or aborted runs. The laboratory

characterization of the test would have to be reviewed before the collaborative study is initiated. When a collaborative study is to be conducted in establishments or elsewhere by FSIS personnel, the Coordinator would be responsible for making these arrangements with Meat and Poultry Inspection Operations, FSIS, and other affected staffs. The applicant would be responsible for planning, executing, and bearing the cost of the entire test development process, except in special cases requiring FSIS inspection personnel.

The Agency specifically seeks comments on the use of field-based collaborative studies and on the approval point in the test characterization sequence. We are aware that conducting a collaborative study in the field increases the variables and may shed an unfavorable light on a technology that could have been improved by laboratory adjustments. The Agency is also aware that approving a test after the collaborative study may prove premature if subsequent field studies uncover problems with the test. The 1-year expiration date for approvals is designed to eliminate tests found unsatisfactory during field testing.

Proprietary Information

All submissions considered by the applicant to be exempt from the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. 552) would have to be accompanied by a statement describing specific adverse effects of disclosure of any portion of the submission. The applicant's statement should include the following two sentences: "It is our position that this submission contains confidential commercial information and should not be released to a third party. Additionally, Executive Order 12600 requires that you notify us should a determination be made to release this material over our objection here stated." Exemption would then be determined on a case by case basis by FSIS. If more than one section of the application is considered proprietary, the applicant must submit a document marked "FOIA" containing all the necessary information for the review, and a second document containing only releasable material.

Approval by the Animal and Plant Health Inspection Service (APHIS) or Other Agencies

If an applicant is seeking approval by FSIS and licensing by APHIS, with the permission of the applicant, the Agencies would share data and conduct the reviews concurrently. Exemption from FOIA would be sustained. The Coordinator would attempt to make similar arrangements with other agencies as the need arises so the exempt status is not changed.

Market for Commercial Tests

Neither the decision by the Deputy Administrator to review a test, nor the approval of a test by the Deputy Administrator, would infer or guarantee the implementation of the test or a regulatory situation that encourages a market for the test. Regulatory priorities and the commercial test market may change during the course of test development and approval, so the market for the test would not be guaranteed. Problems not detected by the review process may be discovered during implementation field tests, and if these problems are serious, the Agency would discontinue further consideration or the use of the test in spite of the decision to consider or the approval.

This notice would not restrict the prerogative of the Agency to respond in emergency situations. If an approved test is not available, or if a test has not been approved for a required use, the Agency would use the most suitable test available to fulfill its regulatory responsibility in the interest of public health.

After the approval of a test, the Agency would reserve the right to require the use of other tests which are more suitable or to purchase other tests available at a lower price if the performance is demonstrated to be equally able to fulfill Agency needs.

Expiration of Approvals

All approvals will automatically expire 1 year after the date of the original approval. Approvals will be reissued when data are presented to the Test Review system demonstrating the satisfactory use of the test in a regulatory program and a record of compliance with the requirements of the Agency's accredited laboratory program.

Redundant Applications

If the Agency receives more than one application for the same test, the first application approved would be reviewed as described above. Subsequent applicants would be asked to provide evidence that their test is at least equivalent to the first approved test. The details of equivalency would be agreed upon with the Technical Reviewer.

False Statements

Applicants would be subject to the provisions of 18 U.S.C. 1001, which provide penalties for knowingly and willingly providing false information to a government entity.

The preamble to any proposed regulations which are issued in this matter will include a discussion of the comments received in response to this Notice.

Done at Washington, DC on: August 10, 1989.

Lester M Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-19234 Filed 8-16-89; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 89-2329]

Divestiture of Control of Certain Insured Institutions

Date: August 7, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to adopt a regulation that would require persons or companies that control an insured institution, and are subject to some form of capital maintenance obligation with respect to such institution, to provide the Board with notice prior to divesting control of the institution in order that the Board may ascertain, before the divestiture, whether the controlling person or company should infuse additional capital into the institution to satisfy the capital maintenance obligation. Under the proposed regulation, acquirors required to provide the Board with notice would be able to complete a proposed divestiture upon paying, or guaranteeing to pay, any amount due under a capital maintenance obligation.

DATE: Comments must be received on or before September 18, 1989.

ADDRESS: Send comments to the Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20006. Comments will be available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Kevin A. Corcoran, Deputy Director for Corporate Transactions, (202) 906-6962;

V. Gerard Comizio, Director, (202) 906–6411; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906–6549, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: For a number of years, the Federal Home Loan Bank Board has conditioned approval of applications by companies to acquire control of insured institutions or savings and loan holding companies on the acquiror's maintaining the capital of the subsidiary institution at or above required levels and infusing capital into the institution if the institution's capital fell below the required level.[1] In addition, capital maintenance obligations are currently imposed on individuals seeking to acquire an insured institution and also have been imposed on controlling shareholders of *de novo* insured institutions.[2] In addition, in a recent policy statement, the Board indicated that capital maintenance responsibilities are one of two types of obligations that may be imposed on individuals acquiring control of insured institutions.[3]

Since the Board first started imposing capital maintenance obligations, it has implemented such requirements in a variety of ways. Recently, the Board has implemented the requirement by means of an agreement between the Board and the acquiror. Previously, the Board implemented the requirement by means of a stipulation signed by the acquiror. When the capital maintenance requirement was first conceived, the Board included as a condition of approval the requirement that the acquiror maintain the insured institution's capital at or above the required level. In all cases, the acquiror consummated the acquisition with full knowledge of the obligation imposed by the conditions of approval specified by the Board.

The exact terms of the capital maintenance responsibility also have changed over time. Until August 1988, acquirors generally were subject to an obligation that was not limited in amount and that remained in existence for as long as the acquiror controlled the insured institution. However, reflecting the Board's most recent policy statement on the subject of capital maintenance,[4] and the guidelines implemented by the Office of Regulatory Activities implementing the policy statement,[5] the capital maintenance agreements currently imposed by the Board are limited as to potential liability and have a duration of ten years.[6]

It has been the Board's experience that acquirors that are subject to a capital maintenance obligation may attempt various strategies to avoid such an obligation. Such attempts may occur, for example, where an acquiror sees the institution facing increased capital requirements and/or a deteriorating financial condition and seeks to avoid its obligations by divesting control of the institution. The problem is particularly acute where the divestiture is to a widely dispersed group of new owners, none of which would be deemed to control the divested institution and, accordingly, none of which would be subject to a new net worth maintenance obligation. Although divestiture does not absolve an acquiror from the responsibility of curing capital deficiencies that occurred while the acquiror controlled the institution (even where the acquiror divests to a new acquiror, who enters into a new capital maintenance obligation), divestiture has, on occasion, raised practical problems with regard to enforcing an agreement.

The Board has consistently believed that acquirors that control the practices of their insured subsidiaries and enjoy the benefits of such control, including FSLIC insurance of accounts, should support such institutions during periods of financial weakness or instability.[7] The obligation to maintain the institution's capital during such periods increases an acquiror's incentive to manage the institution prudently. In addition, such support promotes the continued viability of the institution, and helps maintain a safe and sound financial system and promote depositor confidence. Regardless of the form they have taken, capital maintenance obligations have been explicit, and their existence has been clearly evident to acquirors prior to the time that an acquisition was consummated. Thus, acquirors that are subject to capital maintenance obligation today assumed that position voluntarily, with full knowledge of the obligation they assumed to support the financial condition of the institution they controlled, when they acquired savings institutions and sought to enjoy the benefits of such ownership.

The Board, therefore, does not intend to tolerate efforts to avoid capital maintenance obligations, particularly because attempts to avoid such obligations, when they occur, usually occur when an institution is most in need of the support that the Board has sought to ensure by imposing the obligation.

Accordingly, pursuant to authority under 12 U.S.C. 1437(a), 1725(a), 1730(m)(3), and 1730a(h)(1), the Board proposes to adopt a regulation that would require any acquiror that is subject to a capital maintenance obligation to give prior written notice to the Board of the proposed divestiture of the insured institution to which the obligation relates.[8] In the Board's view, the proposed rule would (and is intended to) contribute to the safety and soundness of insured institutions, help to preserve the federal deposit insurance fund for insured savings institutions, and further the Board's goal of ensuring that acquirors of insured institutions serve as a source of strength to their subsidiary institutions.

Under the proposal, the party giving notice could proceed with the proposed divestiture when either (i) the acquiror provides the Board with an agreement to infuse into the institution the amount necessary to fulfill the acquiror's capital maintenance obligation (calculated on a "snapshot" basis) and makes satisfactory arrangements to assure payment of the amount owed, *e.g.*, by establishing an escrow administered by an acceptable escrow agent; or (ii) the

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[1] Generally, capital maintenance obligations have been computed with respect to an institution's regulatory capital requirement, although tangible capital has occasionally been used.

[2] *See* 12 CFR 571.6(d)(4) (1988).

[3] 53 FR 31761 (August 19, 1988) (the "Policy Statement").

[4] *Id.*

[5] *See Net Worth Maintenance and Prenuptial Agreements*, Office of Regulatory Activities, Thrift Bulletin TB–5, October 19, 1988.

[6] The policy statement as implemented by the guidelines provides that acquirors of insured institutions meeting their fully phased-out capital requirement (as defined in 12 CFR 563.13) upon completion of the acquisition would not be required to enter into such an agreement. In addition, in many cases, acquirors would have the option of entering into a "prenuptial agreement." A "prenuptial agreement" does not by its terms require the infusion of capital into an institution. However, in the event the insured institution's regulatory capital declines below a specified level, the prenuptial agreement grants an officer of the Board the right to vote the securities of the institution held by the acquiror respecting certain actions, to remove and replace the board of directors of the institution, or to dispose of any or all of the securities of the institution owned by the acquiror. The proposed regulation does not impose any limitation on divestiture by an acquiror that is subject to a prenuptial agreement.

[7] *See, e.g.*, the Policy Statement, at 53 FR 31761 (August 19, 1988).

[8] This obligation would be separate from any application to be released from registration as a savings and loan holding company under 12 U.S.C. 1730a(b)(6) and 12 CFR 584.1(d).

extent of the obligation is ascertained and the obligation is satisfied prior to divestiture.[9]

The proposal provides that the Board would have 120 days during which to conduct either a full or limited purpose examination (as deemed appropriate by the Supervisory Agent) of the insured institution to detemine the extent of any capital deficiency.[10] If an examination is not completed within 120 days after the Board received notice of the divestiture, the accounting information set forth in the institution's most recent thrift financial report would be used in computing any deficiency. However, if the failure to complete an examination within 120 days is caused by lack of cooperation from the acquiror, the 120 days period would be extended.

The proposed regulation does not impose any additional liability under existing capital maintenance obligations.[11] Instead, the proposal recognizes that acquirors are obligated to maintain the capital of an institution above certain levels at all times and is designed to ensure that any appropriate amounts are infused into the institution, even where, for example, the accounting records of an institution at the time of a proposed divestiture, for whatever reason, do not reflect deterioration in the quality of an asset. In this regard, the notice of divestiture, as proposed, would require the acquiror to inform the Board of any adverse financial developments affecting the institution.

The Board is concerned, however, that a one-time payment to remedy any capital deficiency that is present at that time does not provide the same protection to the FSLIC as had the continuing obligation to infuse capital whenever a capital deficiency appears. This concern is especially present where an institution has deteriorating asset quality, which is not fully reflected by accounting records which are primarily based upon historical costs. Accordingly, although not part of the current proposal, the Board is considering, and specifically requests commenters to address, whether an additional payment mechanism to address the foregoing concerns should be added to the proposal. Such a mechanism could provide that the Board could determine that an institution's records do not accurately or adequately reflect the institution's financial condition as a result of factors such as poor asset quality, higher risk operations, poor underwriting practices or ongoing operational losses. In such a case, the Board could require that the acquiror establish an acceptable escrow arrangement for funds that would be used to cover the institution's anticipated capital deficiency for a specified period, *e.g.*, two years, after the date of the acquiror's divestiture of control of the institution.

In order to provide flexibility, the proposed regulation permits the Supervisory Agent to grant or deny exemptions from the regulation, after consulting with the Office of Regulatory Activities and the Office of General Counsel. The use of such exemptive authority may be appropriate where, for example, the acquiror proposes to sell the institution to a new acquiror, which would restore the institution's capital to the appropriate level in connection with the acquisition, where the Supervisory Agent, for supervisory reasons, desires prompt divestiture.

The proposed regulation does not impose any limitation on divestiture by an acquiror that is subject to a prenuptial agreement.[12] However, there would appear to be a reasonable basis for imposing a similar requirement in the context of prenuptial agreements, given that if an institution's capital is below the level that triggers the Board's rights under the agreement, the Board may desire to pursue such rights.

The Board requests comment on suitable approaches to use to make sure that acquirors that have entered into prenuptial agreements do not avoid the terms of such agreements. In particular, the Board requests comment on whether the Board should provide that the Board's rights under a prenuptial agreement would survive any transfer of the shares held by the acquiror.[13]

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rule would apply to all persons or companies that are subject to a capital maintenance obligation.

3. *Impact of the proposed rules on small institutions.* The rule will affect all persons and companies who are subject to capital maintenance obligations equally and will not have an adverse impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules which duplicate, overlap, or conflict with the proposed rule.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome and yet effectively accomplish the objectives of the proposed rule than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend part 563, subchapter D, chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128,

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[9] When an acquiror is subject to a *pro rata* capital maintenance obligation (for example, when the acquiror has acquired a minority interest in the institution and the Board has permitted the acquiror's obligation to be *pro rata*), the level at which the acquiror would be required to maintain the capital would be the level the capital of the institution would reach if the acquiror contributed the *pro rata* contribution.

[10] Of course, if the Board determines at a later time that fraud or misrepresentations occurred during the course of the examination, the Board may seek appropriate enforcement remedies.

[11] In addition to providing that termination of the agreement shall not preclude the exercise by the Board of any right or remedy arising from a default under the agreement that occurred or existed prior to termination of the agreement, the current form of regulatory capital maintenance agreement provides that termination of the agreement shall not preclude the Board from exercising any right or remedy under the agreement arising from a regulatory capital deficiency occurring within one year following termination of the agreement. The proposed regulation includes a provision that clarifies that the term of the regulation do not automatically supersede any provisions of existing regulatory capital maintenance agreements; however, termination of such agreements could be negotiated on a case by case basis in conjunction with a divestiture accomplished in accordance with the proposed rule.

[12] Prenuptial agreements are described in footnote 6, *supra*.

[13] Similarly, the Board requests comment on whether the objectives of the proposed regulation concerning capital maintenance agreements could be met by providing that an institution's stock divested by an acquiror subject to a capital maintenance agreement would carry with it a *pro rata* obligation to maintain the capital of the institution.

as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Amend part 563 by adding new § 563.14–2 to read as follows:

§ 563.14–2 Obligations to maintain capital.

(a) *Definitions.* As used in this section, the following definitions apply, unless the context otherwise requires:

(1) *Acquiror* means a person or company that has acquired control of an insured institution.

(2) *Control* means control as determined under § 574.4 (a) or (b).

(3) *Capital* means the measure of capital used in the applicable capital maintenance obligation.

(4) *Capital maintenance obligation* means an obligation to maintain the capital of an insured institution imposed by means of a resolution issued or condition imposed by the FSLIC, the Board, or the delegate of either, a stipulation to the FSLIC, the Board, or the delegate of either, or an agreement between the acquiror and the FSLIC, the Board, or the delegate of either.

(5) *Deficiency* means: (i) The amount by which the level at which the acquiror is required to maintain the institution's capital pursuant to a capital maintenance obligation exceeds the insured institution's capital, as determined pursuant to a full or limited purpose examination (as deemed appropriate by the Supervisory Agent) performed within 120 days of the date the notice required under paragraph (b) of this section is received by the Supervisory Agent; or

(ii) If an examination is not completed within 120 days of the notice required under paragraph (b) of this section, the amount by which the level at which the acquiror is required to maintain the institution's capital pursuant to a capital maintenance obligation exceeds the insured institution's capital, as set forth in the insured institution's most recent thrift financial report, filed prior to the divestiture, provided, however, that if the failure to complete an examination within 120 days is caused by any failure to cooperate by the acquiror, the deficiency shall be based on the results of a completed examination. Notwithstanding any other provision of this section, if the Board determines that fraud or misrepresentation occurred during the course of an examination conducted to determine the institution's capital, the Board may revoke its prior approval of the divestiture of the institution and seek appropriate enforcement remedies.

(6) *Divestiture* or *divest* means any action or conduct that would result in the acquiror no longer being in control of the insured institution.

(7) *Insured institution* means an insured institution as defined under § 574.2(h).

(8) *Savings and loan holding company* means a savings and loan holding company as defined in § 574.2(k).

(b) *Notice.* Prior to divestiture of an insured institution, an acquiror that is subject to a capital maintenance obligation shall provide written notice of such divestiture to the Principal Supervisory Agent. Such notice shall include the following:

(1) The name of the acquiror and the names of all of the acquiror's insured institution subsidiaries.

(2) A description of the transaction pursuant to which the divestiture will be accomplished.

(3) For each insured institution subsidiary, other than an insured institution that is a savings and loan holding company, the insured institution's current level of capital and current capital requirement, and the *pro forma* level of capital and the capital requirement upon divestiture if different from the insured institution's current capital and capital requirement.

(4) A description of any recent adverse financial developments affecting the insured institution and a description of any circumstances that may indicate that the institution's assets are overstated.

(c) *Divestiture.* An acquiror that is subject to a capital maintenance obligation may not divest the insured institution to which the obligation relates unless:

(1) The acquiror provides the Board with an agreement to infuse into the insured institution the amount necessary to remedy a deficiency under the acquiror's capital maintenance obligation and makes arrangements, satisfactory to the Executive Director of the Office of Regulatory Activities, with the concurrence of the General Counsel, or their respective designees, to assure payment of the deficiency, if any; or

(2) The deficiency, if any, is satisfied by the acquiror, prior to divestiture.

(d) *Effect of regulation on terms of capital maintenance obligations.* This regulation does not supercede any liability imposed by a capital maintenance obligation.

(e) *Exceptions.* The Supervisory Agent may, upon application or upon his or her own initiative, grant or deny exemptions from this section, after consulting with the Office of Regulatory Activities and the Office of General Counsel.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19177 Filed 8–16–89; 8:45 am]

BILLING CODE 6720–01–M

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12 CFR Parts 563 and 563b

[No. 89–2342]

Capital Distributions by Insured Institutions

Date: August 7, 1989.

AGENCY: The Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing a rule to apply a uniform regulatory approach to capital distributions such as dividends, stock repurchases and cash-out mergers by institutions regulated by the Board, including those whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") ("insured institution(s)" or "institution(s)"). This proposed regulation utilizes a tiered approach keyed to an insured institution's capital level after giving effect to such transactions. This approach gives institutions meeting their fully phased-in capital requirements greater flexibility to engage in such capital distributing activities than institutions not meeting their fully phased-in capital requirements.

DATES: Comments must be received on or before October 16, 1989.

ADDRESSES: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office, 801 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Associate Deputy Director for Mortgage Capital Markets, (202) 906–6465, Valerie Lithotomos, Attorney, (202) 906–6439, Corporate and Securities Division; Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906–6549, Office of General Counsel; Donald Bisenius, Director, Financial Analysis Division, (202) 906–6759, Office of Policy and Economic Research; Donald Cooper, Compliance Specialist, (202) 906–7171, Office of Enforcement; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; Michael P. Scott,

Policy Analyst, (202) 331–4590, Edward J. Taubert, Deputy Director, Policy Analysis, (202) 331–4588; Robyn Dennis, Financial Analyst (202) 331–4572; Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: This proposed regulation would treat in a uniform manner capital distributions by insured institutions, including dividends, stock repurchases and cash-out mergers. The general approach being proposed is a tiered safe-harbor system keyed to the continued sound capitalization of an insured institution after giving effect to such transactions. This approach prohibits such transactions by institutions with net capital below their fully phased-in capital requirement unless the Board has given prior authorization, while giving institutions that meet their fully phased-in capital requirement and have received ratings of 1 or 2 under the MACRO supervisory ratings system ("MACRO system") significant flexibility to effect such transactions out of capital in excess of their fully phased-in capital requirement.

I. Reasons for Amending the Board's Current Regulation

Capital distributions in the form of dividends, stock repurchases, and cash-out mergers [1] (collectively "capital distributions" or "capital-distributing transactions") all reduce insured institutions' tangible capital and distribute a portion of that capital to third parties that generally are not part of the FSLIC deposit insurance system. These three types of transactions of constitute capital-distributing transactions because they represent different ways in which investors can recover their initial investments and a return on such investments; in the case of dividends and stock repurchases, the distribution is made to the institution's own shareholders; in a cash-out merger, the cash payment made by an acquiring institution is to the stockholders of the institution it is acquiring. Currently, however, these transactions are not treated uniformly, despite their similar economic consequences for insured institutions and the FSLIC.

[1] A cash-out merger is a transaction in which an acquiring institution pays cash to the shareholders of a target insured institution to acquire ownership of and to merge with the target insured institution. The terms "cash-out merger," as used in this regulation, includes any payment to the shareholders of a target institution by an acquiring insured institution, other than a distribution of shares of the acquiring insured institution, to purchase ownership of a target institution from its shareholders.

The Board believes that uniform treatment of these transactions by regulation would provide a consistent Board policy regarding insured institutions' capital needs and the necessity of preserving and enhancing the tangible capital levels of all institutions. Adequate capital is essential to the safe and sound operation of insured institutions because it provides a buffer to absorb losses resulting from insured institutions' operational and financial policies. Furthermore, in order to protect their equity interests and the market for their shares, investors may impose a prudential discipline on institutions' management and on their policies and strategies. A uniform approach would better address the Board's concerns regarding institutions' distribution of their capital, which serves to reduce the institutions' capital cushions and, when such a reduction occurs, to increase FSLIC's loss exposure.

In formulating a rule, however, the Board believes it is imperative to encourage capital formation and to attract new investors in FSLIC-insured institutions. To facilitate the raising of capital by insured institutions in the capital markets, the Board seeks to assure investors that insured institutions in which they have equity stakes will be subject to consistent, reasonable capital requirements. Furthermore, when those requirements are met, those investors will have the ability to redeploy surplus capital in ways that meet their own investment objectives.

To protect depositors and the insurance fund while encouraging such capital formation, the Board is proposing to adopt a safe-harbor approach, allowing capital distributions by insured institutions within parameters set by the Board. This safe-harbor approach would predicate institutions' capital distributions to shareholders on the institutions' capital levels and supervisory ratings under the MACRO system. This would enable the owners of institutions meeting their fully phased-in capital requirements and not presenting significant supervisory problems to redeploy capital in excess of their fully phased-in levels ("surplus capital") to meet their own business needs and investment objectives. For example, a holding company owning an insured institution with surplus capital may wish to shift capital to other subsidiaries in light of their current business needs and subsequently to reinvest such capital in the insured institution if the institution's capital needs increase. In the interest of the safety and soundness of the depository system, however, the safe-harbor seeks to ensure that insured institutions making such capital distributions remain soundly capitalized, thereby providing a strong capital buffer protecting depositors and the insurance fund from loss.

II. Current Treatment of Capital Distributions; Dividends, Stock Repurchases and Cash-Out Mergers

Dividend payments, stock repurchases, and cash-out mergers are currently treated in dissimilar ways despite their similar economic consequences for an institution's capitalization. The treatment of dividend payments is based on the type of transaction and on factors such as how long ago the institution converted from mutual to stock form and whether the institution is affiliated with a holding company. Stock repurchases are currently only controlled as a general matter by regulation if the institution has converted from mutual to stock form, with substantially greater restrictions applying if the conversion has been within the last three years. Currently, *de novo* stock institutions are not subject to regulatory limitation on their dividend payments or stock repurchases. Finally, cash-out mergers have been dealt with on an application-by-application basis in accordance with evolving perspectives of the Board. The following is a discussion of the current treatment of each type of transaction.

A. Dividends

The ability of an insured institution to pay dividends may be, but is not always subject to restriction, with restrictions varying markedly, depending on whether the institution is a converted institution or is owned by a holding company.

A converted institution is prohibited from paying cash dividends if, on a *pro forma* basis, the insured institution's regulatory capital would be reduced below its regulatory capital requirement or the amount required for the institution's liquidation account. *See* 12 CFR 563b.3(g)(2). Converted institutions also are prohibited for the first three years after conversion from paying cash dividends in excess of one-half of the greater of: (1) the converted institution's net income for the current fiscal year, or (2) the average of the institution's net income for the current fiscal year and not more than two preceding fiscal years. *See* 12 CFR 563b.3(g)(3).

As a condition to the approval of holding company applications, the Board until recently had routinely imposed a condition that a subsidiary

insured institution of a holding company may not declare or pay dividends in any fiscal year exceeding 50 percent of the subsidiary insured institution's net income for that fiscal year, although permitted dividends could be deferred and paid in a subsequent fiscal year. In no event, however, could dividends be paid that would cause the insured institution's capital to fall below its regulatory capital requirement under 12 CFR 563.13(b) or successor regulations.

The Board's basic approach to limitations on payments of dividends has been modified recently in connection with the recent Board policy statement on "Regulatory Capital Maintenance Obligations of Acquirers of Insured Institutions", adopted on August 12, 1988, 53 FR 31761 (Aug. 19, 1988), and the supplemental guidelines, "Net Worth Maintenance and Prenuptial Agreements," issued by the Office of Regulatory Activities on October 19, 1988. The current form of dividend restriction agreement required from acquirers of insured institutions in general employs a tiered capital approach for dividends that is similar to, but less conservative than, the approach proposed herein.

In sum, the present dividend agreement employed to implement the guidelines uses a three tier approach keyed to an institution's "net capital".[2] An institution with net capital equal to or in excess of its fully phased-in capital requirement pursuant to 12 CFR 563.13, as modified by 12 CFR 563.14 and 563.14–1, may pay dividends in any quarter up to the amount of its cumulative net income for the preceding eight quarters as reflected on the institution's quarterly reports to the Board, less cumulative dividends paid in such prior eight quarters, without prior approval of the institution's Supervisory Agent. These institutions are only allowed to pay out 100% of their cumulative net income over the prior eight quarters if the dividend payments would not cause the institution to fall below its fully phased-in capital requirement.

If an institution's net capital exceeds its regulatory capital requirement, but is less than its fully phased-in capital requirement, the institution may not pay dividends exceeding 50 percent of its cumulative net income for the prior eight quarters as reflected on its quarterly reports to the Board, less cumulative dividends paid for such prior eight quarters, without prior approval of its Supervisory Agent. These institutions cannot make dividend payments without approval if the payout would result in the institution falling below its minimum regulatory capital requirements.

An institution may not pay a dividend without approval of its Supervisory Agent if its net capital is below its regulatory capital requirement or would fall below its regulatory capital requirement after paying the dividend. This proposed regulation would apply a similar, but more conservative, approach to all institutions' capital distributions.

The Board has also modified both the old and the new dividend restrictions on a case-by-case basis, however, in approving some applications involving well-capitalized insured institutions. For example, one institution was authorized to pay out dividends up to 100 percent of its net income each year provided that its capital as computed under generally accepted accounting principles remained at or above 10 percent of its total liabilities.

Finally, the Board previously has proposed to adopt a regulation prohibiting any insured institution from paying dividends or making stock repurchases if, after giving effect to the transaction, the insured institution's regulatory capital would be less than the institution's regulatory capital requirement under section 563.13. *See* Board Res. No. 85–10, 50 FR 52462 (December 24, 1985) ("Corporate Governance II").

B. Stock Repurchases

Currently, the only general restrictions on stock repurchases by insured institutions are the restrictions applicable to stock repurchases by converted institutions, which are the same restrictions applicable to dividend payments by such converted institutions. This includes the 50 percent of net income test if the institution converted within the last three years. *See* 12 CFR 563b.3(g)(2) and (g)(3). Furthermore, the Board in Corporate Governance II also proposed that stock repurchases by all insured institutions be treated in the same manner as dividend payments. Accordingly, such repurchases would be permitted only if the insured institution on a *pro forma* basis would continue to meet its regulatory capital requirement under 12 CFR 563.13. Logically, this capital floor for dividends and stock repurchases would be the capital requirement § 563.13, as modified by 12 CFR 563.14 and 563.14–1.

In addition, no converted institution may repurchase any of its stock from any person for three years after conversion with the exception of: (i) A repurchase on a *pro rata* basis pursuant to an offer approved by the Board and made to all shareholders of such institution, (ii) the repurchase of qualifying shares of a director, or (iii) the purchase on the open market by the institution's tax-qualified or non-tax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan. *See* 12 CFR 563.b(g)(1). Additionally, § 563b.3(g)(4), adopted by the Board on January 20, 1988, preapproves open market repurchase programs provided that the following conditions are met: (i) No more than 5 percent of the insured institution's or holding company's outstanding capital stock is to be repurchased during any six-month period, (ii) the insured institution's ratio of regulatory capital to total liabilities would not be reduced below 6 percent of total liabilities, and (iii) the repurchases would not adversely affect the financial condition of the insured institution. Board. Res. No. 88–31, Jan. 20, 1988, 53 FR 2477 (Jan. 28, 1988).

C. Cash-Out Mergers

Cash-out mergers can have similar effects to dividends and stock repurchases, although the analysis is more subtle. From the perspective of the acquiring thrift, a cash-out merger is just a purchase of an asset—albeit, a comparatively large purchase and one that carries both assets and liabilities and hence increases the leverage of the resulting entity. From the perspective of the depository insurance system, however, the transaction represents a cash payment by the acquiror to the shareholders of the acquired institution without a corresponding decrease in the institution's liabilities. Consequently, the new combined institution has less capital to support the same level of assets, thereby decreasing its capital-to-assets ratio. The greater leverage of the resulting entity is a reflection of the system-wide reduction in net worth. To demonstrate the similarity between a cash-out merger and a stock repurchase, the following example is illustrative. Assume that a merger was effected through payment to the acquired thrift's stockholders of shares of new "class B" stock issued by the acquiring thrift. Subsequently, the resulting entity repurchases all of the class B stock. The net effect would be the same as if the merger had originally been a cash-out merger.

In considering the proposed approach to cash-out mergers, it is worthwhile noting that the Federal Reserve Board

[2] Net capital is an institution's capital as defined under generally accepted accounting principles ("GAAP capital") plus qualifying subordinated debt and redeemable preferred stock.

has adopted a policy against diminution in capital strength to support expansion proposals.[3] Under this policy, the FRB will only approve an expansion proposal if, before consummation of the acquisition, the acquiring bank raises new equity capital replacing most of its cash outlay for the acquisition and commits to raise additional new capital within a short time period to replace the remainder of its cash outlay.

III. Recent Dividend Experience of Insured Institutions

The Board's Office of Policy and Economic Research has conducted a preliminary review of the dividend payment history of insured institutions from 1984 through 1988 (annualized based on the first three quarters). Other variable factors considered were the institution's capital levels and holding company affiliations.

The Board stresses, however, that this preliminary review of insured institutions' dividend records is not meant to provide economic or supervisory evidence to the need for a proposal with the exact criteria of this proposed regulation. Furthermore, this study does not attempt to draw a direct correlation between dividends paid and the FSLIC's loss experience. Rather, the Board is making a safety and soundness oriented determination that institutions failing their minimum capital requirement should be subject to restrictions on their capital payouts, which delay attainment of sound capitalization. The Board further believes it is necessary to impose a reasonable limitation on capital distributions by institutions with capital exceeding their fully phased-in requirements because accounting information is imperfect and net worth levels can be subject to rapid swings.

The following brief analysis of institutions' recent dividend payments was undertaken by staff and is set forth here to provide a summary understanding of the perceived need for and level of dividends paid by managers of institutions in exercising their discretion under current regulations.

The preliminary review and analysis of average dividends paid by institutions in stock form led to the following observations, including identification that there are a number of undercapitalized institutions paying substantial dividends despite the institutions' risk to the insurance fund.

[3] *See* Citicorp, 72 Federal Reserve Bulletin 497 (1986). *See Id.* Security Pacific Corporation, 72 Federal Reserve Bulletin 800 (1986); New York Company, Inc., 74 Federal Reserve Bulletin 257, 264–265 (1988).

First, many stock institutions did not pay any dividends over the period. Second, dividend payments by thrifts paying dividends at least once during the period averaged 2.36 percent of capital and 23.8 percent of after-tax income. Third, thrifts with negative capital paid few dividends in the four year period, and none after 1986. Finally, insitutions affiliated with holding companies consistently had higher dividend averages than non-holding company affiliated insitutions. When only those thrifts paying dividends during the period were considered, however, the differences fell significantly.

The staff also reviewed the dividend payment record of insured institutions during this period on a median basis. Since the distributions of thrift dividend/income and dividend/capital ratios are highly skewed, the average (mean) dividend rate differs substantially from the median rate. Some institutions as reflected by the average data discussed above, paid greater dividends than income received, or paid a significant fraction of capital out in dividends. On the other hand, many stock institutions have never paid any dividends. If the thrifts that never paid dividends are omitted, the median ratio of annual dividend payments to annual income was 5.1 percent of income. The median ratio of annual dividend payments, by such institutions to their GAAP capital was 0.33 percent of their GAAP capital. Another observation is that the median dividend ratios of thrifts affiliated with holding companies were generally higher than those of non-holding company affiliated thrifts.

Finally, the analysis reflected that some institutions with negative capital may have paid high dividends in earlier quarters in anticipation of insolvency. Of 319 thrifts that became insolvent from 1984 through September 1988, 16 (about 5 percent) of them paid dividends greater than 5 percent of book capital in the quarters prior to insolvency, or paid dividends after capital fell below zero. Of this group, six were affiliated with holding companies. Obviously, such dividends allow investors to recoup their investment while increasing the financial loss that the insurance fund must absorb.

For example, of the 1049 stock-issuing thrifts that operated in all four quarters of 1986, 692 had GAAP capital below 6 percent of assets. Of these institutions, 191 paid some dividends and 54 paid dividends in excess of 50 percent of their after-tax income.

In 1988, there were 1167 stock issuing thrifts operating during all four quarters. Of these institutions 720 had a GAAP capital-to-assets ratio below 6 percent. Of the thrifts in this group, 209 paid dividends, and 984 paid dividends in excess of 50 percent of 1988 after-tax income.

The Board views the dividend payment record of well-capitalized insured institutions as generally reflecting reasonable management action consistent with the Board's policy views and well within the parameters established by this proposed regulation. The record, however, also reflects that institutions needing to reach their fully phased-in capital level are paying dividends, thereby delaying attainment of that goal. Accordingly, the Board is proposing this regulation to help protect the insurance fund from losses caused by the diminution of capital by those insured institutions that have not reached their fully phased-in capital levels, particularly those undercapitalized thrifts that are paying dividends inconsistent with their capital, net income and risk to the deposit insurance fund.

At the same time, however, the Board wishes to leave ample management discretion with respect to capital distributions for institutions meeting or exceeding their fully phased-in capital requirements and not posing significant supervisory problems. The Board believes that this safe-harbor approach is logical in light of the reasonable dividend payment records of most insured institutions and the fact that the approach advances the Board's policy of increasing the capital levels of insured institutions. *See* Bard Res. No. 88–1342 (December 15, 1988), 53 FR 51800 (December 23, 1988).

IV. Proposal

The Board seeks to exercise the greatest supervisory control over those institutions that are below their regulatory capital requirements because of the potential effect of actions taken by such institutions on their safe and sound operation and the increased risk of loss that such institutions pose to the FSLIC. The Board is also concerned about the ability of insured institutions that are between their minimum and fully phased-in capital requirements to meet expeditiously their fully phased-in capital requirements. Capital distributions by institutions not meeting their fully phased-in capital requirements retard the attainment of this goal.

The Board, on the other hand, seeks to give greater management discretion to

institutions meeting or exceeding their fully phased-in capital requirements and not posing significant supervisory problems. Thus, the Board is proposing a tiered approach to capital distributions,[4] based on the soundness of an institution's capitalization and the safety of its operation.

This proposed regulation establishes three tiers of insured institutions. Tier 2 and tier 3 institutions, however, will be treated similarly, but not identically, in their ability to make capital distributions. The three tiers are: (1) Tier 1, an insured institution that has net capital exceeding this fully phased-in capital requirement under 12 CFR 563.13, 563.14 and 563.14–1 as reported on its quarterly reports to the Board and that is rated in one of the top two categories of the MACRO system; (2) tier 2, an insured institution with either (a) net capital above its regulatory capital requirements under §§ 563.13, 563.14 and 563.14–1, but below its fully phased-in capital requirements, or (b) net capital that would qualify it for tier 1, but that is not rated in one of the top two categories of the MACRO system and (3) tier 3, an insured institution with net capital below the amount of its regulatory capital requirement.

An institution is considered to be in a lower tier, such as tier 2 instead of tier 1, if its capital would fall into the lower tier either immediately prior to, or on a *pro forma* basis after giving effect to, a proposed capital distribution. The percentage by which a tier 1 institution's net capital-to-assets ratio exceeds the ratio of its fully phased-in capital requirement to its assets is referred to as its "surplus capital ratio".

A. Tier 1 Institutions

A tier 1 institution would have the greatest discretion to make capital distributions. A tier 1 institution would be permitted (without application) to make aggregate capital distributions during a calendar year up to the amount that would reduce its surplus capital ratio below one-half of its surplus capital ratio at the beginning of the calendar year, as adjusted to reflect its net income to date during the calendar year. If the institution wishes to make capital distributions in an amount above the "safe-harbor" standard, it must receive approval in advance from the Board.

The Board has specifically determined that earnings over a calendar year should logically be regarded as "instantaneous capital". As such, a tier 1 institution's capital distributions during a calendar year are limited to the amount that would reduce by one-half its surplus capital ratio at the beginning of a calendar year as adjusted to reflect its net income for the calendar year to date. This amount is calculated by computing 50 percent of a ratio with a numerator equal to the sum of the institution's surplus capital at the beginning of the calendar year plus its net income to date for the year and a denominator equal to the institution's total assets on the date of the proposed capital distribution. This regulation does not prohibit a tier 1 institution's net capital from falling below this level but does prohibit capital distributions by a tier 1 institution if its net capital is below this level immediately prior to the capital distribution or to the extent that it would fall below that level on a *pro forma* basis after a proposed capital distribution.

For example, if at the beginning of a calendar year, a $100 million asset institution has net capital of $10 million (10 percent of assets) and a fully phased-in capital requirement of $6 million (6 percent of assets), it would have surplus capital of $4 million and a surplus capital ratio of 4 percent of assets. Assume its fully phased-in capital requirement remained constant. Also assume that the institution had earnings of $1 million during the calendar year, thereby increasing its net capital to $11 million (11 percent of assets). This institution's surplus capital ratio at the end of the calendar year would not be permitted to be below 8.5 percent of assets, a reduction of 50 percent of its initial surplus capital ratio of 4 percent (2 percent or $2 million) plus 50 percent of its additional 1 percent ($1 million) from earnings ($500,000). Therefore, this institution could make capital distributions up to $2.5 million during the calendar year without application.

With regard to such tier 1 institutions, the Board's goal is to guard against rapid decreases in their capital levels, while enabling owners of tier 1 institutions to redeploy the institutions' surplus capital as long as the institutions remain soundly capitalized. Because accounting information is imperfect and net worth levels can be subject to rapid swings, the Board believes that the proposed limit of one-half of tier 1 institutions' surplus capital ratios is a conservative and prudent means to protect the safety and soundness of insured institutions. Subjecting current year earnings to the same 50 percent standard applicable to surplus capital reinforces the safeguards of the proposed payout limit during a calendar year of one-half of a tier 1 institution's surplus capital without application, although the Board recognizes that such a rule imposes higher *de facto* minimum capital standards on institutions with higher earnings unless approval is received to drop below this regulatory floor.

B. Tier 2 Institutions

Institutions that qualify as tier 2 institutions on either a current or *pro forma* basis would generally not be authorized to make capital distributions except upon application. The proposed regulation adopts a formal application procedure for relief from the regulatory requirements for tier 2 institutions. It will allow supervisory personnel to approve the making of capital distributions by tier 2 institutions, when appropriate, according to Board delegations of authority and guidelines promulgated by the Office of Regulatory Activities on behalf of the Board. In these guidelines, supervisory personnel will be directed to look favorably upon applications for approval to pay dividends by tier 2 institutions that are making new issuances of stock to raise their capital levels and that are making significant and rapid progress toward meeting their fully phased-in capital requirements. The guidelines would also direct supervisory staff on the appropriated supervisory action to take for violations of this regulation.

In proposing this general limitation on capital distributions by tier 2 institutions, the Board seeks to encourage these insured institutions to build their capital levels through the retention of earnings as well as through securities issuances in the capital markets, while simultaneously adopting an applications process to provide relief in appropriate circumstances. The Board also is providing an incentive through the tiered system in this and other regulations for such insured institutions to attain compliance with their fully phased-in capital requirements prior to

[4] In brief, the Board considers the following transactions, as defined in the proposed regulation, to be capital distributions subject to the tiered approach. First, all non-stock dividends on and repurchases of an institution's common or preferred stock, are defined as capital distributions, as are repurchases of options, warrants, and other rights for the purchase of or conversion into such stock. All of these transactions entail the payout of an institution's capital to its shareholders or to those investors with entitlements to become shareholders. The term capital distribution also encompasses cashout mergers, as defined above, because they cause the acquiring or resulting institution to have a lower capital-to-assets ratio on a *pro forma* basis than the acquiring institutions had before giving effect to the transaction. Finally, the Corporation would be authorized to find that other transactions involving the payout of capital by an institution are capital distributions to be subject to this regulation.

the required compliance dates under the Board's regulations.

All insured institutions must file either an application or a notice with their Principal Supervisory Agents ("PSAs") prior to making capital distributions. First, all insured institution subsidiaries of savings and loan holding companies must comply with the statutorily required notice provisions of § 584.5 prior to paying dividends. Second, all tier 1 institutions must provide written notice to their PSAs ten days prior to the making of capital distributions. This notice requirement is satisfied by compliance with § 584.5. Finally, the notice of requirements under § 584.5 may be satisfied by the filing of applications required for capital distributions by tier 1 or tier 2 institutions, if filed 30 calendar days before making the proposed capital distribution.

C. Tier 3 Institutions

An institution that qualifies as a tier 3 institution either immediately prior to or after making a capital distribution is not authorized to make capital distributions. Exceptions to this policy will not be granted within the confines of the proposed regulation.

The Board firmly believes that it is imperative to prohibit the distribution of capital to shareholders by tier 3 institutions that do not satisfy even their minimum regulatory capital requirements. Protection of the safety and soundness of such institutions, their depositors, and the FSLIC demands that tier 3 institutions preserve any existing capital and dedicate any earnings to building their capital.

The requirements of the proposal, when finalized, will be generally applicable to all insured institutions, including those with current outstanding dividend limitation agreements. These new regulatory requirements will also supplant any forbearances previously granted with regard to dividend payments or other capital distributions. Insured institutions initially will be subject to the more restrictive set of restraints under either their existing dividend agreement or the requirements of the regulation. Institutions under a stricter agreement than the new regulatory requirements, however, may apply to their PSAs to substitute the proposed regulatory standards. These requests will generally be favorably considered barring special supervisory circumstances. The Board expressly seeks comment on this aspect of the proposal.

This proposal's thresholds for capital distributions are keyed to whether insured institutions have net capital equal to their minimum regulatory capital requirements or fully phased-in capital requirements under 12 CFR 563.13, 563.14, and 563.14–1. The proposal is intended to adapt to any future changes to these regulatory requirements, including but not limited to the adoption of risk-based capital regulations currently being considered by the Board and other federal banking agencies and any capital requirements imposed by the Financial Institutions Reform, Recovery and Enforcement Act of 1989. *See* S 413, 101st Cong., 1st Session, 135 Cong. Rec. 5113; S 577, 101st Cong., 1st Session, 135 Cong. Rec. S4304; HR 1278, 101st Cong., 1st Session, 135 Cong. Rec. H2602 (1989). ("FIRREA").

Accordingly, references in this proposal to the terms regulatory capital, regulatory capital requirement and fully phased-in capital requirement relate to the current regulations (§§ 561.13, 563.13 and 563.14) and to any successor to these regulations. These terms refer to current or prospective regulations and relate to the Board's policies on the minimum permissible amount of capital during a transition period ("minimum capital requirement") and attainment by an institution of full capitalization at the end of a transition period ("fully phased-in capital requirement").

The Board also believes that this tiered approach should be used as a guide for various types of corporate restructurings and reorganizations. One such use would be in establishing the amount of proceeds from a mutual to stock conversion by an insured institution that its holding company would be permitted to retain. The amount would depend upon the capital tier into which the institution falls on a *pro forma* basis. Because such a transaction is the economic equivalent of the institution receiving all of the proceeds and then paying a dividend to the holding company, the amount of proceeds retained by the holding company would be aggregated with the insured institution's other capital distributions subject to the ceiling for the institution's capital tier.

Another transaction that would be appropriate to treat as a capital distribution is the capitalization of a holding company in a reorganization. Under the standards of this proposal, the amount of capital infused into the newly formed holding company by the insured institution would be aggregated with other capital distributions for the period and would be limited by application of the tiered ceilings.

V. Solicitation of Comment on Specific Issues

The Board, in addition to seeking comment on the entire proposal, expressly seeks comment on specific alternative provisions of the regulation that the Board may adopt in the final regulation.

First, although the Board has determined not to explicitly address growth issues in this proposed regulation, there is a strong argument for doing so. Both growth and capital distributions can involve "capital dissipation" and, as such, effectively reduce an insured institution's capital ratio. There is no substantive economic difference between a cash-out merger (fully addressed in the proposal) and asset/liability growth of an equivalent amount in terms of the increase in the leverage of the resulting institution.

The Board recognizes, however, that the existing regulatory and supervisory policies on growth, restricting the growth of insolvent and troubled institutions, as well as requiring sufficient capitalization of all new growth, address many of the supervisory difficulties that the Board has experienced in the past with regard to rapid growth. Furthermore, FIRREA is expected to provide the Board with an explicit statutory mandate and authority to restrict the growth of any insured savings association that is not meeting applicable regulatory capital requirements. The Board's successor agency will need to implement this authority in a comprehensive regulatory fashion, which cannot be done at this time because the legislation has not been finalized.

Because of the many issues that will arise in the context of amending the Board's growth regulations and policies and the desire of the Board to keep this proposal simple in order to issue it in an expeditious manner, the Board is not proposing to address growth issues at this time. The Board, however, expects to incorporate growth in a consistent fashion with this proposed policy after FIRREA becomes law and requests comment on the appropriate regulatory interrelationship between growth and capital distributions in the post-FIRREA era.

Second, the Board solicits comment on what other types of capital distributions should or should not be encompassed under the same approach, either explicitly in this regulation or by providing the discretion for the Board or its designee to make a subsequent finding that an activity constitutes a capital distribution that should be

subject to this regulation. The Board also specifically seeks comment on whether contributions to employee stock ownership plans, because of their potential effect on institutions' capital and the distribution to the employees, officers, and directors of insured institutions' capital, warrant separate express treatment under this proposed regulation.

Third, the Board also seeks comment on whether preferred stock dividends should be treated differently under this proposed rule, particularly in light of insured institutions' commitments to pay dividends and to accumulate unpaid dividends on existing classes of preferred. If insured institutions were unable because of this proposed rule to pay preferred stock dividends, to what extent would this require insured institutions to violate the terms of their issued preferred stock and expose such institutions to liability or immediate acceleration? Also, would such action generate undue concern and negative market perceptions resulting in impairment of such institutions' market access? These matters present significant problems and the Board asks for comment on the appropriate method of dealing with these issues in its final rule.

Finally, from a supervisory standpoint, the Board seeks comment on whether there is any need for supervisory concern if tier 1 institutions that make capital distributions early in a calendar year subsequently suffer losses during the calendar year that causes their net capital to fall below one-half of their surplus capital ratio at the beginning of the calendar year plus one-half of their earnings during the calendar year. The proposal does not expressly prohibit a tier 1 institution's net capital from falling below one-half of its surplus capital ratio at the beginning of the period (plus one-half of earnings year-to-date), but does prohibit further capital distributions if the institution's net capital is at or below this level on a current or *pro forma* basis. Should the Board, however, require institutions to wait until later in a calendar year to make capital distributions or only permit capital distributions early in a calendar year deemed by the insured institution to be consistent with their projections of net income/losses during the coming year?

VI. Solicitation of Comment on Alternative Approaches

In addition to seeking comment on specific aspects of this proposal, the Board also requests commenters to address the merits of adopting alternative approaches to this proposal. One such alternative has been used previously in imposing conditions to the approval of certain holding company applications. This option utilizes a sliding-scale approach based on an institution's capital instead of the tiered approach herein proposed.

Under one form of sliding-scale system, an institution would be allowed to declare and pay dividends up to 50 percent of its net income for any quarter if the institution has regulatory capital at least equal to its regulatory capital requirement. If the institution's regulatory capital is greater than or equal to its fully phased-in regulatory capital requirement and its GAAP capital is greater than or equal to 6 percent of total liabilities, the institution would be permitted to declare and pay dividends up to 75 percent of its net income for any quarter. If the institution's regulatory capital is greater than or equal to its fully phased-in regulatory capital requirement plus 2 percent of total liabilities and its GAAP capital is greater than or equal to 6 percent of total liabilities, then the institution would be permitted to declare and pay dividends up to 90 percent of its net income for any quarter.

The ability to declare and pay dividends under the foregoing approach would be subject to a "rolling" four-quarter period test of dividends paid and net income. Dividends declared and paid in any quarter would not only be limited to the net income of the quarter but would be aggregated with the dividends and net income from the three immediately preceding quarters. In no event would the institution be permited to declare and pay dividends that would reduce its capital below its minimum regulatory capital requirement. The Board requests comment on whether adoption of such a sliding scale approach applied to all capital distributions would provide greater protection to the FSLIC and would provide greater enhancement of the safe and sound operation of insured institutions than the tiered approach proposed herein.

Another alternative to the proposal would make further distinctions between the limitations on capital distributions for tier 2 and tier 3 institutions. For example, a tier 2 institution could be allowed to make aggregate capital distributions during any calendar year up to 50 percent of its net income for the calendar year without application. (This standard, if adopted, would also be available as an alternative for tier 1 institutions.) The Board could also permit tier 2 institutions to pay dividends on new classes of stock issued by the institution to raise capital without having to submit an application. Since the Board is unclear on the best method of implementing this option, if adopted, (*i.e.*, Class B common stock, special classes of preferred), it requests comment on the optimal approach. Finally, under either of these alternatives, institutions qualifying as tier 3 institutions on either a current or *pro forma* basis would still generally be prohibited from making capital distributions, but could be authorized to make such capital distributions in rare instances upon receiving supervisory approval of their waiver applications.

The Board is also considering options eliminating either the 50% of net income restriction or all restrictions on capital distributions by tier 1 institutions that are in compliance with their fully phased-in requirements immediately prior to and after the proposed capital distributions. The Board strongly urges all interested persons to comment on the foregoing specific provisions and alternative approaches.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small institutions to which the proposed rule would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a)(1988). Therefore, small entities to which the proposed rule applies are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1987.

3. *Impact of the proposed rule on small entities.* The proposed rule would not have a substantial impact on small insured institutions and would apply uniformly to all insured institutions.

The rule would not impose any unnecessary financial, recordkeeping or administrative burden on small insured institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* The Board is not aware of any alternatives that would be less burdensome than the proposed rule in addressing the concerns expressed in

the **SUPPLEMENTARY INFORMATION** set forth above. The Board, however, specifically requests comment on appropriate alternatives to this proposed rule.

List of Subjects in 12 CFR Part 563 and 563b

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby proposes to amend parts 563 and 563b, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend part 563 by adding a new § 563.48 to read as follows:

§ 563.48 Capital distributions.

(a) *Definitions:* (1) *Capital distribution* means:

(i) Any dividend paid or other distribution (including but not limited to, a liquidating distribution) made on or with respect to any shares of an insured institution, but not including a dividend consisting of shares of the insured institution;

(ii) Any payment made by an insured institution to repurchase, redeem, retire or otherwise acquire any of its shares;

(iii) Other distributions charged against the capital accounts of an insured institution;

(iv) Any payments to shareholders of an insured institution by an acquiring insured institution to acquire ownership of the insured institution, other than distributions of shares of the acquiring insured institution;

(v) Other types of transactions determined by the Board to entail the payout of capital by an insured institution.

(2) *Net capital* means components of capital acceptable under generally accepted accounting principles ("GAAP Capital") plus qualifying subordinated debt and redeemable preferred stock.

(3) *Shares* means common and preferred stock; any securities convertible into such stock; and any options, warrants, or other rights for the acquisition of such stock.

(4) *Surplus capital ratio* means the percentage by which an institution's net capital-to-assets ratio exceeds the ratio of its fully phased-in capital requirement to its assets.

(5) *Tier 1 institution* means an insured institution that:

(i) Has net capital immediately prior to, and on a *pro forma* basis after giving effect to, a proposed capital distribution that is equal to or greater than the amount of its fully phased-in capital requirement under §§ 563.13, 563.14, and 563.14–1 of this part as reported on its quarterly reports to the Board ("fully phased-in capital requirement") and

(ii) Whose most recent composite MACRO rating in one of the top two categories of the MACRO system.

(6) *Tier 2 institution* means an insured institufion that has net capital immediately prior to, and on a *pro forma* basis after giving effect to, a proposed capital distribution that is equal to or in excess of its minimum regulatory capital requirement under §§ 563.13, 563.14, and 563.14–1 of this part as reported on its quarterly reports to the Board ("minimum regulatory capital requirement"), but that either:

(i) Has net capital immediately prior to, or on a *pro forma* basis after giving effect to, a proposed capital distribution that is less than the amount of its fully phased-in capital requirement; or

(ii) Has net capital equal to or exceeding its fully phased-in capital requirement, but whose most recent composite MACRO rating is not in one of the top two categories of the MACRO system.

(7) *Tier 3 institution* means an insured institution that has net capital immediately prior to, and on a *pro forma* basis after giving effect to, a proposed capital distribution that is less than the amount of its minimum regulatory capital requirement.

(b) *Limits on capital distribution*—(1) *Tier 1 Institution.* A tier 1 institution is authorized to make capital distributions during a calendar year up to the amount that would reduce its surplus capital ratio to less than one-half of its surplus capital ratio at the beginning of the calendar year as adjusted to reflect its net income to date during the calendar year. Any additional capital distributions during the calendar year require prior written approval of the institution's Principal Supervisory Agent ("PSA") and the concurrence of the Office of Regulatory Activities ("ORA"). Any institution violating this provision would need approval by its PSA and the concurrence of ORA to engage in any activity during the current or subsequent calendar year that would further reduce its surplus capital ratio.

(2) *Tier 2 Institution.* A tier 2 institution shall not make capital distributions unless approval is granted pursuant to paragraph (e) of this section.

(3) *Tier 3 Institution.* A tier 3 institution is not authorized to make any capital distributions.

(4) No insured institution may make a capital distribution prohibited by any statute or regulation, including but not limited to § 563b.3(g) of this part, or prohibited by any agreement entered into by the institution with the Corporation or its designee, unless:

(i) With respect to § 563b.3(g), approval is granted under part 563b, or

(ii) With respect to other limitations, prior approval is granted pursuant to paragraph (e) of this section.

(c) *Notice of capital distribution.* All insured institutions must file either an application or a notice with their Principal Supervisory Agent prior to making capital distributions. All insured institution subsidiaries of savings and loan holding companies must comply with the notice provisions of § 584.5 prior to paying dividends. All tier 1 institutions are required to provide written notice to their PSAs no less than ten calendar days prior to the making of a capital distribution. This notice requirement is satisfied by compliance with § 584.5. Finally, the notice requirements under § 584.5 may also be satisfied by the filing of applications required for capital distributions by tier 1 institutions wishing to exceed the limits of this regulation or tier 2 institutions, if filed no less than 30 days before making the proposed capital distribution.

(d) *Corporate reorganizations.* The tiered limits set forth above in paragraph (b) of this section shall control any direct or indirect distributions of capital to affiliates in connection with corporate reorganizations.

(e) *Exceptions.* (1) The Corporation is authorized to approve or deny exceptions from the limitations of paragraphs (b)(1), (b)(2), or (d) of this section upon written application by an institution setting forth good cause why such an exception would not be detrimental to the safe and sound operation of the institution or protection of the deposit insurance system.

(2) An institution under a more restrictive dividend agreement than that

contained in this rule may elect to comply with the standards of this section in lieu of the dividend agreement entered into prior to [effective date of the regulation]. An institution making such an election shall submit a written notice of this election to its PSA. If the PSA does not object within 30 calendar days of receipt of the notice of election, the institution will thereafter be subject to the provisions of this section.

(3) *Delegations of authority.* (i) The Principal Supervisory Agent, or designee, acting pursuant to delegations of authority by the Board and guidelines issued by ORA, is authorized to approve or deny exceptions from the limitations of paragraphs (b)(1) and (b)(2) of this section when requested alone, or in connection with applications for which the PSA, or designee, has delegated authority. The guidelines issued by ORA will specifically direct the PSA, or designee, to consider favorably applications for approval to pay dividends by tier 2 institutions making new stock issuances to raise their capital levels and who are making significant and rapid progress toward meeting their fully phased-in capital requirements. The guidelines shall direct supervisory staff on the appropriate supervisory action to take for violations of this regulation.

(ii) ORA is authorized:

(A) To approve or deny exceptions from the limitations of paragraphs (b)(1), (b)(2) and (d) of this section, unless the application involves a significant issue of law or policy and

(B) To condition approval of any application not involving an issue of law or policy upon an institution entering into a capital distribution agreement with individually designed provisions differing from the provisions of this section if determined by ORA to be necessary to preserve the safe and sound operation of the insured institution and to protect the deposit insurance system.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

3. The authority citation for part 563b continues to read as follows:

Authority: Section 5A, 47 Stat. 727, as added by section 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sections 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462; 1464), sections 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); section 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3, 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, 1–n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071.

4. Section § 563b.3 is amended by revising paragraph (g)(2) and by removing paragraph (g)(3) and redesignating paragraph (g)(4) as the new paragraph (g)(3) to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(g) *Restrictions on repurchase of stock and payment of dividends.* * * *

(2) No converted insured institution shall declare or pay a dividend on, or repurchase any of, its capital stock if the effect thereof would cause the regulatory capital of the converted insured institution to be reduced below the amount required for its liquidation account. Any dividend declared or paid on, or repurchase of, a converted insured institution's capital stock also shall be in compliance with § 563.48 of this subchapter.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-19176 Filed 8-16-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-132-AD]

Airworthiness Directives; Boeing of Canada Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes, Serial Numbers 3 Through 119, Inclusive, Equipped With Eldec Proximity Switch Electronic Control Unit (PSEU), Part Number 8-410-03 or 8-410-04

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 series airplanes, which currently requires a revision of the Airplane Flight Manual (AFM) to include a pre-flight check of the nose-gear cockpit indication system, and repair, if necessary, in order to preclude the possibility of the system indicating an erroneous nose gear position. This proposal would require modification of the landing gear control system which would terminate the need for the pre-flight procedures required by the existing AD. This proposal is prompted by the development of a modification which includes certain wiring changes to make the operation of the landing gear selector valve and the opening of the landing gear doors independent of the Proximity Switch Electronic Unit.

DATES: Comments must be received no later than October 6, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-132-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, New York Aircraft Certification Office, ANE-173, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York, 11581; telephone (516) 791-6427. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice

must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-132-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On February 26, 1988, the FAA issued AD 88-03-51, Amendment 39-5868 (53 FR 7348; March 8, 1988), applicable to de Havilland Model DHC-8 series airplanes, which requires a revision to the Airplane Flight Manual (AFM) to include a pre-flight check procedure of the nose-gear cockpit indication system, and repair, if necessary. That action was prompted by a report of a fault identified in the Proximity Switch Electronic Control Unit (PSEU), which can result in failure of the nose-gear to extend and an incorrect gear position indication in the cockpit.

Since issuance of that AD, de Havilland has issued Service Bulletin 8-32-70, Revision A, dated September 16, 1988, which describes procedures for modification of the wiring of the landing-gear control system, making the operation of the landing gear selector valve and opening of the landing gear doors independent of the PSEU. This modification, if accomplished, terminates the need for the pre-flight procedure for the nose-gear cockpit indication system. Transport Canada has issued Canadian Airworthiness Directive CF-88-02R2 addressing this subject.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would revise AD 88-03-51 to require modification of the landing gear control system in accordance with the service bulletin previously described.

The applicability statement has been changed to identify special serial numbers of the affected airplanes. The FAA has determined that the modification of the wiring of the landing-gear control system was incorporated during manufacture on airplanes having Serial Number 120 and higher.

It is estimated that 42 airplanes of U.S. registry would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The modification kits will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $67,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88-03-51, Amendment 39-5868 (53 FR 7348; March 8, 1988), as follows:

De Havilland Aircraft Co. of Canada, a Division of Boeing of Canada, Ltd.: Applies to de Havilland Model DHC-8-101 and -102 series airplanes, Serial Number 3 through 119, inclusive, equipped with Eldec Proximity Switch Electronic Control Unit (PSEU), P/N 8-410-03 or 8-410-04, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To preclude the possibility of the nose gear cockpit indication system indicating erroneous nose gear position, accomplish the following:

A. Within 24 hours after March 25, 1988 (the effective date of Amendment 39-5868), add the following to the Limitations Section of the Airplane Flight Manual (AFM) and notify all crew members. This may be accomplished in inserting a copy of this AD in the AFM:

1. Perform the following check prior to each flight: This check is to be performed even when the airplane is being operated with the anti-skid inoperative under the minimum equipment list:

a. Anti-skid switch—"OFF"

b. Anti-skid switch—"ON"

c. Check that inboard and ouboard anti-skid caution lights illuminate, and then extinguish within 6 seconds. Should the lights fail to function as noted above, dispatch is prohibited until maintenance action clears the fault.

2. While performing the 'After Take Off' and 'Approach' procedures:

a. Monitor the landing gear indication system during landing gear retraction and extension.

b. If there is any irregularity in gear indication or operation at any time throughout the filght, the gear must be confirmed down and locked using the alternate down-lock verification system, irrespective of gear down and locked (green) indication on the normal landing gear indicating system.

B. Any in-flight landing gear irregularity must be corrected after landing by maintenance action prior to further flight.

C. Within 60 days after the effective date of this amendment, modify the landing gear control system, in accordance with Service Bulletin 8-32-70, Revision A, dated September 16, 1988. This modification constitutes terminating action for the requirements of paragraphs A. and B. of this AD, and the revised operating procedures may be removed from the AFM.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada Ltd, de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on August 7, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19281 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-139-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require replacement of aluminum brake control shafts with steel shafts. This proposal is prompted by reports of fractures of aluminum shafts on Boeing Model 757 series airplanes. The Model 767 is similar to the Model 757 in this area. This condition, if not corrected, could result in partial or complete loss of braking on one side of the airplane and, potentially, complete loss of braking on the airplane.

DATES: Comments must be received no later than October 6, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-139-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipts of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-139-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: There have been several occurrences of aluminum brake metering valve actuation shafts failing on Boeing Model 757 series airplanes. The cause of these failures was determined to be due to fatigue of the shafts. This condition, if not corrected, could result in partial or complete loss of braking on one side of the airplane and, potentially, complete loss of braking on the airplane.

On June 8, 1989, the FAA issued AD 89-13-08, Amendment 39-6241 (54 FR 26022; June 21, 1989), to require the replacement of aluminum shafts with steel shafts on the Model 757 series airplanes.

The FAA has determined that a similar unsafe condition may exist on Boeing Model 767 series airplanes because certain Model 767 airplanes are equipped with aluminum brake metering valve module shafts similar to those on the Model 757.

The FAA has reviewed and approved Boeing Service Bulletin 767-32-0081, dated April 27, 1989, which describes the replacement of the aluminum brake metering valve module shaft with steel shafts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the replacement of aluminum brake metering valve module shafts with steel shafts in accordance with the service bulletin previously described.

There are approximately 152 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 67 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts are estimated at $2,656 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $199,392.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is continued in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes listed in Boeing Service Bulletin 767–32–0081, dated April 27, 1989, certificated in any category. Compliance required within the next 750 landings after the effective date of this AD or prior to the accumulation of 15,000 landings, whichever occurs later, unless previously accomplished.

To prevent partial loss of braking and, potentially, the complete loss of braking, accomplish the following:

A. Replace aluminum brake metering valve module shafts with steel shafts, in accordance with Boeing Service Bulletin 767–32–0081, dated April 27, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 7, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–19282 Filed 8–16–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–145–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Boeing Model 757 series airplanes, which would require modification; one-time and periodic inspections; and repair, if necessary, of passenger doors to ensure proper operation of the emergency power assist door opening system. This proposal is prompted by reports of fractured emergency power assist triggers. This condition, if not corrected, could result in an inoperative emergency power assist door opening system during an emergency evacuation.

DATES: Comments must be received no later than October 10, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–145–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Aerospace Engineer, Airframe Branch, ANM–120S; telephone (206) 431–1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–145–AD." The post card will be date/time stamped and returned to the commenter.

Discussion: Several operators of Boeing Model 757 airplanes have reported instances in which the trigger for a passenger door emergency power assist system had fractured. Investigation has revealed that trigger fractures or damage, resulting from torsional overload, may be caused by interference, sticking, or binding of the trigger mechanism. It appears that sticking or binding of the spring cylinder, a part of the trigger mechanism, contributes to damaged trigger forks. This condition, if not corrected, could result in failure of the trigger mechanism to activate the power assist reservoir and, subsequently, render the door emergency power assist opening system inoperative when required during an emergency evacuation.

The FAA has reviewed and approved Boeing Service Bulletin 757–52–0042, dated March 30, 1989, which describes the modification, inspection, and repair of certain passenger doors to eliminate interference with the emergency power assist trigger mechanism; periodic inspections for failed, damaged, or inoperative parts of the emergency power assist trigger mechanism and their replacement or repair; and proper adjustment of the emergency lockout mechamism.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification, inspection, and rework, if necessary, in accordance with the service bulletin previously described.

There are approximately 205 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the initial actions, and the average labor cost would be $40 per manhour. Based on these figures, the total initial cost impact of the AD on U.S. operators is estimated to be $39,960. It is estimated that it would take 3 manhours per airplane to accomplish each periodic inspection, resulting in an annual estimated cost impact of $26,640.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-52-0042, dated March 30, 1989 (hereafter referred to as the Service Bulletin), certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure passenger door power assist opening when required for emergency evacuation, accomplish the following:

A. For airplanes identified in the Service Bulletin as Group 1, within the next 350 flight hours after the effective date of this AD, accomplish the following in accordance with section III., Part II., of the Service Bulletin. Any interference or improper clearance detected as a result of the required inspections must be repaired prior to further flight, in accordance with the Service Bulletin.

1. Modify the forward right-hand door.

2. Inspect all doors for evidence of interference between the trigger support housing and the upper hinge arm.

3. Inspect all doors for proper clearance between the power assist trigger and the door and fuselage skin.

B. For all airplanes, within the next 350 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 6 months, accomplish the following inspections in accordance with Section III., Part I., of the Service Bulletin. Any damage or improper adjustment or operation detected as a result of the inspections must be repaired prior to further flight, in accordance with the Service Bulletin.

1. Inspect the forward doors for proper adjustment of the lockout mechanism of the door emergency power assist system.

2. Inspect all passenger door emergency power assist triggers for wear marks, damage, or fracture.

3. Inspect trigger spring cylinders for proper operation.

4. Inspect roller arms for damage.

C. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 8, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19283 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-141-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplaines, which currently requires external and internal inspections of the skin at fuselage lap joints and stringer 17 for cracks, corrosion, and delamination, and repair, if necessary. This action would increase the applicability to include additional airplanes, expand the definition of terminating action for one group of airplanes, and revise the terminating action requirements for the skin along stringer 17. This proposal is prompted by the discovery that the improved tearstrap hot bonding process occurred at a later airplane line number than previously determined. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Comments must be received no later than October 10, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-141-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communictions should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to aknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–141–AD." The post card will be date/time stamped and returned to the commenter.

Discussion: On October 27, 1988, the FAA issued AD 88–22–11, Amendment 39–6059 (53 FR 44156; November 1, 1988), applicable to certain Boeing Model 737 series airplanes, line numbers (L/N) 001 through 464, to require external and internal inspections of the skin at fuselage lap joints and stringer 17 for cracks, corrosion, and delamination, and repair, if necessary.

That action was prompted by reports of extensive cracking occurring at cold bonded lap splices. This condition, if not corrected, could result in rapid decompression of an airplane.

Since issuance of that AD, the manufacturer has advised the FAA that incorporation of the improved tear strap hot bonding technique was not accomplished on airplanes beginning with line number (L/N) 465, as originally stated. After a review of the airplane manufacturing records, operator reports, and results of a manufacturer's inspection program, the improved process has been determined to have been incorporated at L/N 520. Therefore, the applicability of AD 88–22–11 must be expanded to also include airplanes L/N 465 through L/N 519.

Additionally, changes to the terminating requirements for inspection along stringer 17 are proposed which reduce the area for tearstrap bond assurance to one bay above and below the stringer. This change was necessary due to the different failsafe characteristics at stringer 17 when compared to the lap joints.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–53A1039, Revision 5, dated May 25, 1989, which describes inspection and repair procedures for Model 737 lap joints.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 88–22–11 to expand the applicability to include additional affected airplanes. This proposal would also revise the existing AD to clarify the terminating action requirements for late line number airplanes and revise the terminating action requirements for the skin along stringer 17. The economic and regulatory burden for operators of airplanes, line numbers 001 through 464, would not be changed.

Finally, the rule would be revised to include reference to Revision 5 of the applicable Boeing service bulletin (described above) as an optional service information source for compliance with the requirements.

There are approximately 55 additional Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 12 additional airplanes of U.S. registry would be affected by this amendment, that it would take approximately 2,798 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the amendment on U.S. operators is estimated to be $1,343,040.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39–6059 (53 FR 44156; November 1, 1988), AD 88–22–11, as follows:

Boeing: Applies to Model 737 series airplanes, line number 001 through 519, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. For airplanes line number 001 through 291, prior to the accumulation of 40,000 landings, or within 10 calendar days after November 21, 1988 (the effective date of Amendment 39–6059), whichever occurs later, restrict all flight operations to a maximum cabin pressure differential of 5.67 psi until the inspections required by paragraph B.1., below, are accomplished.

B.1. For airplanes line number 001 through 291, within the next 1,500 landings after November 21, 1988, or prior to the accumulation of 40,000 landings, whichever occurs later, unless previously accomplished within the last 3,000 landings; and thereafter at intervals not to exceed 4,500 landings or 15 months, whichever occurs first; accomplish the requirements of paragraph C., below, along the skin at all fuselage lap joints between BS 259 and BS 1016.

2. At the initial interval indicated in Table 1, below, unless previously accomplished within the last 4,000 landings, accomplish the requirements of paragraph C., below, along the skin at stringer (S)–17 between BS 360 and BS 540 and between BS 727 and BS 927.

TABLE 1

Airplane line No.	Initial inspection
001 through 291	Within 500 landings after November 21, 1988 or prior to the accumulation of 40,000 landings, whichever occurs later.
292 through 464	Within 500 landings after November 21, 1988, or prior to the accumulation of 60,000 landings whichever occurs later.
465 through 519	Within 500 landings after the effective date of this amendment, or prior to the accumulation of 60,000 landings, whichever occurs later.

Repeat the inspection at intervals not to exceed 4,500 landings or 15 months, whichever occurs first.

C. For airplanes identified in paragraphs B.1. and B.2., above, remove paint with an approved chemical stripper, or ensure that the fastener head is clearly visible and that

no more than 2 coats of paint are on the airplane skin, prior to the inspections required by this paragraph:

1. Perform a high frequency eddy current inspection for cracks along the upper rivet line at the lap joints and along both rivet lines at S–17, in accordance with Boeing Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988, accordingly.

Note: No credit will be given for previous inspections accomplished on a painted surface where the fastener head was not clearly visible or where more than 2 coats of paint were on the airplane skin.

2. Perform a detailed external visual inspection, using adequate lighting for evidence of corrosion or delamination. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners. If evidence of corrosion or delamination is found, prior to further flight, perform a low frequency eddy current inspection for corrosion to determine material loss, of the entire length of the effected panel, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988.

3. Repair cracks, corrosion, and delamination prior to further flight (except as permitted by paragraph G., below), in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988.

a. All upper row fasteners at the lap joint and both rows of fasteners at S–17 of any skin panel in which cracks are found, must be replaced with standard protruding head solid fasteners, in accordance with the applicable service bulletin, within 3,000 cycles following the repair.

b. Blind fasteners are to be used as an interim repair only, and must be replaced with protruding head solid fasteners within 3,000 cycles following installation.

(1) For airplanes line numbers 001 through 464: Repairs installed with blind fasteners prior to November 21, 1988, must be inspected for loose or missing fasteners within 1,000 cycles after that date; and all upper row fasteners in the affected panel must be replaced with standard protruding head solid fasteners within 3,000 cycles after that date.

(2) For airplanes line numbers 465 through 519: Repairs installed with blind fasteners prior to the effective date of this amendment, must be inspected for loose or missing fasteners within 1,000 cycles after the effective date of this amendment; and all upper row fasteners in the affected panel must be replaced with standard protruding head solid fasteners within 3,000 cycles after the effective date of this amendment.

c. (1) For airplanes line numbers 001 through 464: Repairs of the skin installed with countersunk fasteners at any fuselage lap joint or along S–17 prior to November 21, 1988, must be inspected and verified as FAA-approved within 1,000 cycles after that date. Repairs determined not to be FAA-approved must be replaced or modified in accordance with an FAA-approved method prior to further flight.

(2) For airplanes line numbers 465 through 519: Repairs of the skin installed with countersunk fasteners at any fuselage lap joint or along S–17 prior to the effective date of this amendment, must be inspected and verified as FAA-approved within 1,000 cycles after the effective date of this amendment. Repairs determined not to be FAA approved must be replaced or modified in accordance with an FAA-approved method to further flight.

D. For airplanes line number 001 through 291, within the next 2,250 landings or within 6 months after November 21, 1988, whichever occurs first, or prior to the accumulation of 40,000 landings, whichever occurs later, unless accomplished within the last 9,750 landings; and thereafter at intervals not to exceed 12,000 landings or 4 years, whichever occurs first; accomplish the inspections described in paragraph F., below. If the inspections required by paragraph C., above, are repeated at intervals not to exceed 2,250 landings or 7½ months, whichever occurs first, then the requirements of paragraph F., below, may be deferred until the accumulation of 7,000 landings or 24 months after November 21, 1988, whichever occurs first.

E. For airplanes line number 292 through 464, within the next 12,000 landings or 4 years after November 21, 1988, whichever occurs first, and for airplanes line number 465 through 519, within the next 12,000 landings or 4 years after the effective date of this amendment, whichever occurs first; or prior to the accumulation of 40,000 landings, whichever occurs later; and thereafter at intervals not to exceed 12,000 landings or 4 years; whichever occurs first; accomplish the inspections described in paragraph F., below.

F. As required by paragraphs D. and E., above, perform a detailed internal visual inspection of tearstraps (circumferential portion of the bonded waffle doubler), not mechanically fastened to the skin between BS 360 and BS 1016 2 bays above and 1 bay below the lap joints at S–4 and S–10, and between BS 259 and BS 360 2 bays above and 1 bay below the lap joint at S–4 for delamination and corrosion, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989. Adequate lighting must be used for this inspection. Inspect for bulges in the doubler, white powder or a thin black line at the edges of the doubler, and missing or dished fasteners. Check for disbond by pushing outward on the skin while attempting to insert a feeler gage between the doubler and skin. If inspection areas are obscured by sealant, dirt, etc., these areas must be cleaned. If disbond or corrosion is found, inspect entire skin panel as described above, in addition to one bay of the adjacent skin panel (above and below), and repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988, as appropriate.

G. If corrosion found as a result of the external inspection does not exceed 10 percent of the skin thickness, reinspect for corrosion in accordance with paragraph C.2. or I., of this AD, as appropriate, at intervals not to exceed 2,250 cycles or 6 months, whichever occurs first, until a repair is accomplished. If such corrosion exceeds 10 percent of skin thickness or if cracking is found, repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, for the skin along the lap joints; or Boeing Service Bulletin 737–53–1089, Revision 1, dated October 13, 1988, for the skin along S–17. Following such repair, resume inspections in accordance with paragraphs C.2. or I., of this AD, as appropriate.

H. The accomplishment of the following two subparagraphs constitutes terminating action for the inspection indicated:

1. a. For airplanes line number 001 through 291, accomplishment of the terminating repair at all lap joints between BS 259 and BS 1016, in accordance with Boeing Alert Service Bulletin 747–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, constitutes terminating action for paragraphs A., C., and F., as they apply to lap joint areas. This repair includes replacing all upper row fasteners with standard protruding head solid fasteners and assuring the tearstraps are functional 2 bays above and 1 bay below each lap joint, by the use of mechanical fasteners where disbonding of the tearstraps has occurred.

b. For airplanes line number 292 through 519, perform a detailed internal visual inspection of the tearstraps for delamination and corrosion 1 bay above and 2 bays below all lap joints between BS 259 and BS 1016, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989. Repair delamination and corrosion in accordance with the service bulletin using mechanical fasteners as necessary. In skin panels where delamination is detected, accomplish the lap joint modification in accordance with the service bulletin. This subparagraph constitutes terminating action for paragraph F., above.

2. Accomplishment of the preventative modification as described in Boeing Service Bulletin 737–53–1039, Revision 1, dated October 13, 1988, constitutes terminating action for the requirements of paragraphs A., C., and F. as they apply to the skin at S–17. The repair requires using standard protruding head solid fasteners, and assuring that the tearstraps are functional 1 bay above and below S–17, by the use of mechanical fasteners where disbonding of the tearstraps has occurred, in accordance with the Structural Repair Manual.

I. For aircraft on which the procedures described in paragraph H.1., above, have been accomplished in accordance with Part IV, A.2., of Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Part II, B of Boeing Service Bulletin 737–53A1039, Revision 5, dated May 25, 1989, within 15 months after accomplishment, or within 6 months after the effective date of

this AD, whichever occurs later, perform an external visual inspection of the skin for corrosion and delamination at all lap joints in accordance with that service bulletin. If corrosion is found, prior to further flight, perform a low frequency eddy current inspection of the entire length of the affected panel to determine material loss. If cracks are found, prior to further flight, perform a high frequency eddy current inspection of the entire length of the affected skin panel in accordance with the service bulletin. Repair cracks, corrosion, and delamination, prior to further flight (except as permitted by paragraph G., above), in accordance with the service bulletin. Inspections are to continue at intervals not to exceed 15 months.

J. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

K. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 9, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-19284 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-9]

Proposed Alteration of VOR Federal Airway; West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of VOR Federal Airway V-45 located in the state of West Virginia. This proposal would establish a portion of V-45 Charleston and Henderson, WV. This action would lessen the workload associated with flight plan filing and facilitate clearance delivery along this route by air traffic facilities.

DATES: Comments must be received on or before September 25, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA-500, Docket No. 89-AEA-9, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AEA-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availabilty of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-45 located in the state of West Virginia. This action, to extend V-45 from Charleston to Henderson, WV, would eliminate a break in the continuity of the route. This action would also serve to lessen the workload associated with filing a flight plan as well as to facilitate clearance delivery along this route by air traffic facilities. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-45 [Amended]

By removing the words "Charleston, WV. From Henderson, WV;" and substituting the words "Charleston, WV; Henderson, WV;"

Issued in Washington, DC, on July 27, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-19286 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 3630-7; EPA/OSW-FR-89-021]

Hazardous Waste Management System, Identification and Listing of Hazardous Waste; New Data and Use of These Data Regarding the Proposed Identification and Listing as Hazardous Waste From the Manufacture of 1,1-Dimethylhydrazine

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comments; supplement to proposed rule.

SUMMARY: On December 20, 1984, the Environmental Protection Agency proposed to amend its hazardous waste identification regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) by amending the list of hazardous wastes under 40 CFR part 261.32. As proposed in 1984, the Agency proposed to list as hazardous a group of wastes generated during the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides. The Agency based its conclusion that these wastes should be regulated as hazardous in part on the determination that they contained significant concentrations of UDMH, which was evaluated by the U.S. EPA's Carcinogen Assessment Group (CAG) to be a potential human carcinogen (U.S. EPA, 1984).

As a result of this proposal, questions were raised regarding the appropriate use of certain studies upon which CAG based its determination. Today's notice presents new data which the Agency believes supports a conclusion that UDMH should be considered a potential human carcinogen. Therefore, we are making available for comment this new data the Agency believes should be considered in making our final decision to list these wastes as hazardous.

This new data includes a peer reviewed assessment performed by EPA's Office of Pesticides Programs (U.S. EPA, 1989) of new data generated by the manufacturer of both UDMH and a major pesticide product that uses UDMH as a starting material, Alar. The documents containing this new data as well as EPA's assessment of this data are listed in the reference section of this Notice of Data Availability.

The Agency specifically solicits comments on the use of the new data as it would support the listing of wastes from the manufacture of UDMH as hazardous.

DATES: EPA accept public comments on this notice until September 18, 1989.

ADDRESSES: The official record for this notice of data availability as well as the proposed rulemaking for the listing of UDMH wastes is identified as Docket Number F-89-DMHA-FFFFF and is located in the EPA RCRA docket, Room 2427, 401 M Street SW., review docket materials by calling (202) 475-9327. A copy of the May 15, 1989 Second Peer Review of Daminozide (Alar) and UDMH (Unsymmetrical 1,1-dimethylhydrazine) is available for viewing and copying only in the OSW docket.

Copies of the Daminozide Technical Support Document as well as the studies conducted by Uniroyal Corporation used as a basis for determining the carcinogenicity of UDMH are contained in EPA's Office of Pesticide Programs Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Room 246, CM#2, U.S. EPA, 1921 Jefferson Davis Highway, Arlington, VA 22202. Both dockets are available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday. The public may copy 100 pages from the docket at no charge; additional copies are available at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information, contact Dr. Cate Jenkins, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4786.

SUPPLEMENTARY INFORMATION:

I. Background

A. RCRA Hazardous Waste Listings

Section 3001 of the Resource Conservation and Recovery Act (RCRA), as amended, requires EPA to identify wastes that pose a substantial hazard to human health and the environment, if the wastes are improperly managed. One means for doing this is by listing wastes from specific industry sources as hazardous under 40 CFR Part 261.32.

On December 20, 1984 (49 FR 49556), the Agency proposed to amend the list of hazardous wastes by adding four wastes generated during the manufacture of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines. These listings were proposed in response to a requirement by the Hazardous and Solid Waste Amendments of 1984 (HSWA) to make a decision whether to list wastes generated from the production of UDMH. These wastes included:

- K107—Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.
- K108—Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UMDH) from carboxylic acid hydrazines.
- K109—Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UMDH) from carboxylic acid hydrazines.
- K110—Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.

The effect of this proposed regulation would be to subject these wastes to the hazardous waste management standards contained in 40 CFR Parts 262 to 266, 270, 271, and 124 of this chapter; the notification requirements of section 3010 of RCRA; and the notification requirements under CERCLA section 103.

The Agency made its preliminary conclusion that these wastes should be listed as hazardous based in part on the determination that they were

contaminated with significant concentrations of UDMH. The U.S. EPA's Carcinogen Assessment Group (CAG) evaluated the toxicological studies available at that time and concluded that UDMH should be considered a potential human carcinogen (U.S. EPA, 1984).

B. FIFRA Registration Standard for Daminozide

In the early 1980s, the Agency's Office of Pesticide Programs initiated a review of the pesticide manufactured from UDMH, Daminozide, through its Registration Standard process to identify any outstanding data gaps regarding the possible carcinogenicity and other health effects of Daminozide and its contaminant, UDMH. Evaluations of the risk of Daminozide and UDMH, developed through this review process, were submitted to the Scientific Advisory Panel (SAP) and the United States Department of Agriculture (USDA) as required by the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA). Based on this review, the SAP believed that the data from these studies were insufficient to support a quantitative risk assessment for either Daminozide or UDMH because of various limitations in methodology and documentation.

Based in large part on the SAP's review, EPA concluded that it should not proceed with the cancellation action at that time, but instead should take steps to minimize exposure to Daminozide and UDMH and require the Uniroyal Corporation, the company which manufactures Daminozide, to begin a wide range of testing that would enable EPA to base its cancer risk assessment on more complete and sound scientific data.

C. Discussion of the New Data and Request for Comments

Based on the additional data submitted by Uniroyal as a result of this requirement to conduct additional studies, EPA has made a preliminary determination that supports the conclusion that Daminozide and UDMH are carcinogenic. The basis for this determination was given in detail in a May 24, 1989 Preliminary Determination to Cancel Certain Daminozide Product Registrations (54 FR 22558).

By this Notice, the Agency is requesting comments on the use of this data and determination regarding the potential carcinogenicity of UDMH to support, in part, the basis for a listing determination under 40 CFR 261.32 of the RCRA regulations for wastes generated from the manufacture of UDMH. The documents relating to the Agency's assessment of the carcinogenicity of UDMH (listed in the Reference section of this Notice) may be obtained from the Office of Pesticide Programs Public Docket listed in the ADDRESSES section of this Notice. The May 15, 1989 Second Peer Review of Daminozide (Alar) and UDMH (Unsymmetrical 1,1-dimethylhydrazine) as well as the supporting documentation for the Agency's December 20, 1984 proposal to list as hazardous four wastes from the manufacture of UDMH are contained in the RCRA Docket listed in the ADDRESSES section of this Notice.

Dated: August 11, 1989.

Robert L. Duprey,

Acting Deputy Assistant Administrator for Solid Waste and Emergency Response.

References

U.S. Environmental Protection Agency (1984) Health and Environment Effects Profile for 1,1-Dimethylhydrazine. Prepared by Environmental Criteria and Assessment Office, EPA, Cincinnati, OH 45268. Publication No. ECAO-CIN-026.

U.S. EPA, Office of Pesticides and Toxic Substances (May 15, 1989) Second Peer Review of Daminozide (Alar) and UDMH (Unsymmetrical 1,1-dimethylhydrazine).

Uniroyal Corporation (1982) Report—P7642: Assessment of Its Ability to Induce Primary DNA Damage in Strains of *Escherichia coli*. Docket No. D-7246B.

Uniroyal Corporation (1983) Report—P7642: Assessment of Its Ability to Induce Genetic Damage in *Saccharomyces cerevisiae*—Amended Final Report. Docket No. D-7245B.

Uniroyal Chemical Company, Inc. (1984a) Balance Study of ^{14}C Labelled Daminozide in Rats. Biospherics Inc., Acc No. 253012, Appendix F.

Uniroyal Chemical Company, Inc. (1984b) 1,1-dimethylhydrazine Bioavailability Study in Guinea Pigs. Borriston Labs, Inc. Project No. 23084, Acc No. 252413.

Uniroyal Chemical Company, Inc. (1984a) Magnitude of the Residues in Food/Feed Daminozide/UDMH Crop Field Trials, MRID 402247-01 and Addendum, January 1988, MRID 404874-01.

Uniroyal Chemical Company, Inc. (1986) Market Basket Survey, February 1986, MRID 263812, Phase II, October 1986, MRID 265706, Phase III, February 1987, MRID 400874-03.

Uniroyal Chemical Company, Inc. (1987b) Livestock Feeding Studies of Residues in Milk and Goat Tissues, November 1987, MRID 404199-01, -04, -06.

Uniroyal Chemical Company, Inc. (1987c) Livestock Feeding Studies of Residues in Eggs and Hen Tissues, November 1987, MRID 404199-02, -03, -05, -07.

Uniroyal Chemical Company, Inc. (1987d) Metabolism of Daminozide in Miniature Swine, Analysis for UDMH in Liver Tissue. Final Report submitted by Mitros, K., Doweyko, A.M. and Burger, R.N., December 1987, MRID 404519-01.

Uniroyal Chemical Company, Inc. (1987e) Exposure of Greenhouse Workers to Daminozide Applied by Hand-held Atomizing Sprayers. Study submitted by Ames R. and Ball, J.O., MRIS 400874-01, 205 pages.

Uniroyal Chemical Company, Inc. (1988a) Two Year Dietary Oncogenicity Study in Mice. 5 Volumes, MRID 408131-02.

Uniroyal Chemical Company, Inc. (1988b) Two Year Rat Oncogenicity Study on Alar (Daminozide), August 1988, MRID 408131-01.

Uniroyal Chemical Company, Inc. (1988c) Two Year UDMH Rat Study—12 Month Interim Sacrifice. Submitted to Uniroyal Chemical Company by Johnson, D. of International Research and Development Corp., March 1988, MRID 405520-01.

Uniroyal Chemical Company, Inc. (1988d) Two Year Oncogenicity Study in Mice ("Low dose")—One Year Interim Report. Submitted to Uniroyal Chemical Company by Johnson, D. of International Research and Development Corp., April 1988.

Uniroyal Chemical Company, Inc. (1988e) Interim 12-month Sacrifice—Two Year Study in Mice, July 1988, MRID 407401-01 and Interim Eight-month Sacrifice—Two Year UDMH Oncogenicity Study in Mice, February 1987, MRID 405502-101. Submitted to Uniroyal Chemical Company by Johnson, D. for International Research and Development Corp.

Uniroyal Chemical Company, Inc. (1988g) Rat Hepatocyte Primary Culture/DNA Repair Test, Barfknecht, T.R., December 1986, MRID 400326-05; *In vitro* Chromosome Aberration Analysis in Chinese Hamster Ovary (CHO) Cells, San Sebastian, J., December 1986, MRID 400326-04; Ames/Salmonella Plate Incorporation Assay, Stankowski, L. December 1986, MRID 400326-01; Mammalian Cell Forward Gene Mutation Assay, Stankowski, L. and Tuman, W., January 1987, MRID 400677-01.

[FR Doc. 89-19355 Filed 8-16-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6964]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already

in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Newport, City, Jackson County.	Village Creek, Outfall Ditch	At downstream corporate limits	*224	*223
			Approximately 900 feet upstream of Daugherty Street.	None	*227
Maps available for inspection at the City Hall, 120 Walnut, Newport, Arkansas 72112.					
Send comments to The Honorable Wayne Beard, Jr., Mayor of the City of Newport, Jackson County, P.O. Box 128, Newport, Arkansas 72112.					
Colorado	City of Boulder, Boulder County.	Boulder Creek	Approximately 400 feet downstream of Arapahoe Avenue.	*5245	*5245
			Approximately 210 feet downstream of Arapahoe Avenue.	*5246	*5247
			At Arapahoe Avenue	*5247	*5250
			Approximately 600 feet upstream of Arapahoe Avenue.	*5252	*5253
			Approximately 1,200 feet upstream of Arapahoe Avenue.	*5257	*5258
			Approximately 700 feet downstream of 30th Street.	*5263	*5263
		Skunk Creek	At the confluence with Bear Canyon Creek	*5243	*5243
			Just upstream of Foothills Parkway	*5245	*5243
			Just downstream of Colorado Avenue	*5260	*5260
		Boulder Creek (Right Bank Overflow).	At Foothills Parkway	*5240	*5240
			Approximately 2,320 feet upstream of Foothills Parkway.	*5257	*5254
Maps are available for review at the Utilities Administrative Office, 1739 Broadway, Suite 306, Boulder, Colorado.					
Send comments to The Honorable Linda Jourgensen, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.					
Connecticut	Stratford, Town, Fairfield County.	Long Brook	At the confluence with Tanners Brook and Ferry Creek.	*11	*10
			Just upstream of Brewsters Pond Dam	*40	*36
		Brewsters Pond	For entire shoreline	*40	*36
		Tanners Brook	At confluence with Long Brook	*11	*10
		Ferry Creek	At confluence with Housatonic River	*11	*10
			At confluence with Tanners Brook and Long Brook.	*11	*10

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town Hall, 2725 Main Street, Stratford, Connecticut. Send comments to The Honorable Ronald W. Owens, Stratford Town Manager, Fairfield County, 2725 Main Street, Stratford, Connecticut 06497.					
Kentucky	City of Louisa, Lawrence County.	Big Sandy River	At confluence of Town Branch	*576	*575
		Levisa Fork	At confluence of Tug and Levisa Forks	*577	*576
			Within community	*577	*576
Maps available for inspection at the City Hall Building, 215 North Main Cross Street, Louisa, Kentucky. Send comments to The Honorable Mike Armstrong, Mayor, City of Louisa, City Hall Building, 215 North Main Cross Street, Louisa, Kentucky 41230.					
Mississippi	City of Starkville, Oktibbeha County.	Springer's Branch	At mouth	None	*299
			About 330 feet upstream of East White Drive	None	*328
		Sand Creek	Just downstream of confluence of Sand Creek Tributary 1.	*282	*279
			About 400 feet upstream of West Point Road	*290	*288
		Sand Creek Tributary 1	At confluence with Sand Creek	*283	*279
			About 600 feet upstream of Patrick Road	*284	*284
		Sand Creek Tributary 2	At confluence with Sand Creek Tributary 1	*283	*281
			About 1100 feet downstream of West Point Road.	*284	*284
Maps available for inspection at the Building Department, City Hall, Lampkin Street, Starkville, Mississippi. Send comments to The Honorable Bill Stacy, Mayor, City of Starkville, City Hall, Lampkin Street, Starkville, Mississippi 39759.					
New Jersey	Spotswood, Borough, Middlesex County.	Cedar Brook	Approximately 910 feet upstream of CONRAIL	*31	*30
			Approximately 380 feet downstream of upstream corporate limits.	*35	*34
Maps available for inspection at the Borough Hall, 77 Summerhill Road, Spotswood, New Jersey. Send comments to The Honorable George R. Balascak, Mayor of the Borough of Spotswood, Middlesex County, 77 Summerhill Road, Spotswood, New Jersey 08884.					
North Carolina	City of Thomasville, Davidson County.	Hanks Branch	About 2000 feet downstream of Young Street	*718	*718
			Just downstream of State Road 109	*744	*745
			Just upstream of State Road 109	*745	*748
		Hasty Creek	About 300 feet downstream of Hasty Hill Road	*746	*747
			About 550 feet downstream of Payne Road	*763	*764
			Just downstream of Payne Road	*768	*768
		Hunts Fork	Just downstream of Ball Park Road	*735	*735
			Just downstream of Norfolk Southern Railway	*833	*829
			Just upstream of Norfolk Southern Railway	*837	*843
			Just upstream of Blair Street	*846	*846
		North Hamby Creek	About 750 feet downstream of State Road 109	*809	*809
			Just downstream of Julian Avenue	*828	*827
			Just upstream of Julian Avenue	*830	*833
			Just upstream of Mason Way	*854	*854
		South Hamby Creek	Just downstream of Access Road	*774	*774
			Just downstream of washed out dam	*790	*793
			Just upstream of washed out dam	*791	*798
			About 650 feet upstream of High Point, Thomasville and Denton Railroad.	*816	*817
Maps available for inspection at the Engineering Office, City Hall, 7 West Guilford, Thomasville, North Carolina. Send comments to The Honorable Kyle Williams, City Manager, City of Thomasville, P.O. Box 368, Thomasville, North Carolina 27360.					
Tennessee	City of Kingsport, Sullivan County.	Holston River	About .31 mile downstream of inter-plant railroad.	*1174	*1172
			At conference of North Fork Holston River & South Fork Holston River.	*1179	*1178
		North Fork Holston River	At mouth	*1179	*1178
			About .18 mile upstream of U.S. Route 11W	*1181	*1180
		South Fork Holston River	At mouth	*1179	*1178
			Just downstream of Fort Patrick Henry Dam	*1208	*1210
		South Fork Holston River Sluice.	At confluence with South Fork Holston River	*1179	*1178
			About .37 mile upstream of Wilcox Drive	*1191	*1192
		Reedy Creek	Just downstream of Industry Drive	*1180	*1181
			Just upstream of Industry Drive	*1181	*1181
		Horse Creek	About .15 mile downstream of John B. Dennis Bypass.	None	*1207
			About .66 mile upstream of Ridge Road	None	*1217
		Kendrick Creek	About 300 feet downstream of Interstate 81	None	*1448
			About 400 feet upstream of Interstate 81	None	*1461

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at City Hall, Planning Department, 225 West Center Street, Kingsport, Tennessee. Send comments to The Honorable Hunter W. Wright, Mayor, City of Kingsport, City Hall, 225 West Center Street, Kingsport, Tennessee 37660.					
Texas	Bedford, City Tarrant County.	East Fork Bedford Creek	At the confluence with Bedford Creek	*552	*554
			Approximately 550 feet upstream of Bedford Forum Drive.	*559	*560
		Bedford Creek	Approximately 520 feet upstream of State Route 121.	*552	*553
			Downstream side of Bedford Road	*565	*566
		Bedford Creek Tributary 1	At the confluence with Bedford Creek	None	*553
			Approximately 640 feet upstream of the confluence with Bedford Creek.	None	*554
Maps available for inspection at the Engineering Department, City Hall, 200 Forest Ridge Drive, Bedford, Texas. Send comments to The Honorable L. Don Dodson, Mayor of the City of Bedford, Tarrant County, P.O. Box 157, Bedford, Texas 76095-0157.					
Texas	Farmers Branch, City Dallas County.	Farmers Branch Creek	At confluence with Elm Fork of the Trinity River.	*431	*434
			Approximately 1,825 feet upstream of confluence of Stream 6H1.	*576	*580
		Rawhide Creek	At confluence with Farmers Branch Creek	*457	*458
			At upstream corporate limits	*565	*564
		Cooks Branch	At downstream corporate limits	*436	*438
			At Fyke Road	*505	*503
		Elm Fork of the Trinity River	At downstream side of Royal Lane	*430	*432
			Approximately .7 mile upstream of Valley View Lane.	None	*438
		Stream 6H1	At confluence with Farmers Branch Creek	*566	*568
			Approximately 1,565 feet upstream of Midway Road.	*587	*588
		Tributary CB 187-L	Approximately 200 feet upstream of confluence with Cooks Branch.	*483	*484
			Approximately 693 feet upstream of confluence with Cooks Branch.	*483	*486
Maps available for inspection at the City Hall, 13000 William Dodson Parkway, Farmers Branch, Texas. Send comments to The Honorable Dave Blair, Mayor of the City of Farmers Branch Dallas County, P.O. Box 819010, Farmers Branch, Texas 75234.					
Texas	Haltom City, City Tarrant County.	Big Fossil Creek	Approximately 200 feet upstream of Haltom Road.	*565	*566
			Approximately 500 feet downstream of corporate limits.	*574	*575
Maps available for inspection at the City Hall, 5024 Broadway Avenue, Haltom City, Texas. Send comments to The Honorable Jack O. Lewis, Mayor of the City of Haltom City Tarrant County, P.O. Box 14246, Haltom City, Texas 76117.					
Texas	Kenedy, City Karnes County.	Escondido Creek	At downstream corporate limits	*265	*259
			Approximately 1,050 feet upstream of U.S. Route 181.	*284	*273
		Nichols Creek	At confluence with Escondido Creek	*266	*260
			At upstream corporate limits and FM 1145	None	*292
Maps available for inspection at the City Hall, 305 W. Main Street, Kenedy, Texas. Send comments to The Honorable A. G. "Tito" Vidaurri, Mayor of the City of Kenedy Karnes County, P.O. Box 539, Kenedy, Texas 78119.					

Issued: August 10, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-19349 Filed 8-16-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-351, RM-6377]

Radio Broadcasting Services; Carlisle, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Nicholas County Broadcasting, proposing the allot Channel 264A to Carlisle, Kentucky, as its first FM service at coordinates 38-21-02 and 83-55-42.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the

FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jerrold Miller, Miller and Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for petitioner)

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–351, adopted July 26, 1989, and released August 11, 1989,. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–19315 Filed 8–16–89; 8:45 am]

BILLING CODE 6710-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

Injurious Wildlife; Importation of Fish or Fish Eggs

AGENCY: Fish and Wildlife Service.

ACTION: Notice of intent to revise 50 CFR 16.13.

SUMMARY: Regulations designed to reduce the risk of importing certain untreatable, uncontrollable pathogens of salmonid fishes (50 FR 16.13) have not been revised in nearly 20 years. Many factors relative to such regulations have changed during that period. As a result, the Fish and Wildlife Service intends to revise the regulations concerning the importation of fish or fish eggs to improve their effectiveness in reducing the risk of introducing certain pathogens of fish into the United States. This notice of the intent to revise the regulations controlling the importation of fish or fish eggs is provided so that interested parties may comment on the need for, and the potential effects of, such revisions and suggest additions, deletions, or other modifications to the regulations.

DATES: Comments, statements of effects, and suggestions pertaining to the intended revisions must be received on or before October 16, 1989.

ADDRESSES: Comments, statements, and suggestions must be sent to: Chief, Division of Fish Hatcheries, 820 ARLSQ, U.S. Fish and Wildlife Service, Department of the Interior, 18th & C Streets, NW., Washington, DC 20240. Telephone: 703/358–1878

FOR FURTHER INFORMATION CONTACT: Dr. John C. Nickum, Division of Fish Hatcheries, 820 ARLSQ, U.S. Fish and Wildlife Service, Department of the Interior, 18th & C Streets, NW., Washington, DC 20240; telephone: 703/358–1878.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service has broad responsibilities for the welfare of fish and wildlife resources of the United States, including protection of fish resources from the introduction of exotic pathogens. Regulations (50 CFR 16.13) governing the importation of fish, or the eggs of fish, or the flesh of fish of the family Salmonidae were developed and implemented to reduce the risk of introducing certain untreatable, uncontrollable pathogens of salmonid fishes into the United States. These regulations have not been revised for nearly 20 years. Factors affecting the effectiveness, and the effect, of these regulations, have changed considerably during that time. The Fish and Wildlife Service needs information, comments, and suggestions from all interested parties concerning the value of such regulations; the economic, environmental, and other effects of the existing and potential regulations; and suggestions for specific provisions that should be included in the regulations. The information obtained from public comments will be used to develop proposed regulations and to complete necessary environmental and regulatory analyses. The material that follows: (1) Requests information and comments on specific issues relevant to existing or potential regulations, (2) provides additional background information on the rationale for the regulations, and (3) describes the process that will be used to develop the revised regulations.

Background

Disease in fish populations results from interactions of fish, pathogens, and the environment. The simultaneous presence of a suitable host fish and a pathogen in a particular place may not lead to disease; however, the most certain way to avoid disease is to keep host fish and pathogens separate. Minimizing the risk of disease in hatchery reared fish used to maintain stocks that cannot be maintained through natural reproduction is especially important. Many populations of trout and salmon are maintained primarily through hatchery production; therefore, regulations have focused on the importation of salmonid fishes and the flesh or eggs of salmonid fishes, so as to reduce the risk of introducing untreatable, uncontrollable pathogens into the hatchery and free-ranging stocks of salmonid fishes in the United States.

Present regulations require that importations of live fish or dead fish (including frozen fish or fillets) or eggs of the fish family Salmonidae must be

By direct shipment, accompanied by a certification that the importation is free of the protozoan *Myxosoma cerebralis*, the causative agent of so-called whirling disease, and the virus causing viral hemorrhagic septicemia, or Egtved disease. The certification shall be signed in the country of origin by a designated official acceptable to the Secretary of the Interior as being qualified in fish pathology, or in the United States by a qualified fish pathologist designated for this purpose by the Secretary of the Interior.

Fish caught in the wild in North America, or fish fleet or eggs that have been processed in a manner that kills the pathogens have been exempted from these regulations. The existing regulations were not designed to deal with pathogens that are already widespread in the United States, can be controlled by standard therapeutic measures, or do not cause disease in salmonid fishes. Existing regulations and procedures would be retained in the revised regulations except for provisions that are identified to be in need of addition, deletion, or modification.

Specific Information Needs

Interested parties are encouraged to offer comments and suggestions on any

or all aspects of 50 CFR 16.13 of concern to them. However, the Fish and Wildlife Service is particularly interested in economic, environmental, and general information relating to the following specific questions and/or topics. A background statement providing basic information follows each question.

1. Should a provision be included that would require all importations of salmonid fishes or eggs to be certified as free of all known replicating viral pathogens of salmonid fishes. (Viruses not known to cause pathological effects in fish or that cannot replicate on salmonid fish cell cultures would not be included.) What would be the effects of adding this requirement?

Background: Diseases of fish caused by viruses cannot be treated effectively through existing methods. At the time the present regulations were written, viral hemorrhagic septicemia (VHS) was the only known viral disease considered a serious threat to fish resources in the United States. The list of viruses known to infect fish has grown substantially in recent years and continues to grow rapidly, thereby making it virtually impossile to maintain an up-to-date current list of controlled pathogens. A general ban on viruses known to replicate/cause cytopathic effects on cultures of fish cells has been suggested as an effective, practical method of preventing the importation of those viruses identified since the original regulations were established, as well as those that may be identified in the future.

2. Should a provision be included to require all importations of fish or eggs of esocid fishes to be certified as free of all replicating viral pathogens of salmonid or esocid fishes? What would be the effects of such an addition?

Background: Esocid fishes are known to contract and carry VHS; therefore, importation of these fishes could be a possible avenue for introduction of VHS, or possibly other viral pathogens, into U.S. waters.

3. Should a provision be included banning the importation of live fishes of the families Salmonidae and Esocidae? What would be the effects of such a provision?

Background: Importations of live fish create the greatest risk for introducing pathogens into the United States. There are no known procedures for effectively disinfecting live fish prior to shipment, and they normally will be transferred into fish culture facilities or lakes and streams where they and any pathogens they carry will mingle with resident stocks.

4. Should a provision be included to require all live eggs of salmonid and esocid fishes to be water-hardened in solutions of polyvinylpyrrolidone iodine prior to importation into the United States? What would be the effects of such a provision?

Background: Water-hardening and/or treatments before and/or after shipment of eggs have been shown to remove pathogens from the surface of eggs and thereby to reduce the risk of transferring pathogens.

5. Should parental stocks from which live salmonid or esocid eggs are obtained for importation into the United States be required to have a two-year history of freedom (three inspections over a two-year period) from the viral pathogens banned under these regulations? What would be the effects of such a regulation?

Background: Sampling and monitoring over an extended period of time would reduce the risk of a pathogen actually being present, but not being detected during a single inspection.

6. Should fillets, fresh or frozen, of salmonid or esocid fishes to be excluded from the provisions of these regulations? What would be the effect of such an exemption?

Background: It has been suggested that there is very little probability of fillets being discarded uncooked, or otherwise unprocessed, and, therefore, they pose very little risk for introducing pathogens into North American waters.

7. Should fish caught in North American waters from free-ranging stocks be subject to the same certification requirements that apply to fish, fish eggs, or fish products imported from other continents or produced in North American aquaculture facilities? What would be the effects of such a provision?

Background: Present regulations exempt from certification requirements those fish caught under a valid sport or commercial license and landed in North America, because such fish and the waters they inhabit may move freely across national boundaries and it is not practical to enforce such a regulation. However, certification of freedom from viral hemorrhagic septicemia virus and *Myxobolus cerebralis* is required for fish from all aquaculture facilities, including those in North America, because these fish are thought to have greater probability of carrying controlled pathogens and it is possible to operate a valid inspection and certification program. It has been suggested that free-ranging fish and cultured fish should be treated similarly, where practical to do so.

8. Should a provision be included requiring live eggs of the Atlantic salmon (*Salmo salar*) to be certified as free of *Renibacterium salmoninarum*, the causative agent for bacterial kidney disease? What would be the effects of such a requirement?

Background: Reinibacterium salmoninarum is common in many areas of the United States; however, there have been no outbreaks of bacterial kidney disease in the hatcheries and stocks that provide fish for the programs designed to restore natural runs of Atlantic salmon in New England, nor has this bacterium been found in sea-run adults returning to rivers in New England. There is concern that failure to require imported Atlantic salmon eggs to be free of *Reinibacterium salmoninarum* could increase the reservoir of infective agents, thereby increasing the probability that returning adults would carry the pathogen and, in turn, lead to disease outbreaks that would jeopardize restoration efforts. *Reinibacterium salmoninarum* is egg-transmissible; therefore, it can be argued that imported eggs must be certified to come from stocks free of the bacterium if the risk from such introductions is to be avoided.

9. Should the present requirement that importations of salmonid fishes or eggs be certified as free of *Myxobolus (myxosoma) cerebralis* be deleted? What would be the effects of deleting this requirement?

Background: Whirling disease, caused by *Myxobolus cerebralis*, is untreatable. At the time the present regulations were written, the impact of the disease was considered to be very severe. Present information indicates that *Myxobolus cerebralis* has become firmly established in some areas (at least 16 States of the United States) and management techniques have been developed that reduce the undesirable effects of the pathogen.

10. Should a provision be included that would require laboratories that wish to import tissues, suspensions, fluids, cell cultures, or other materials containing pathogens covered by these regulations (50 CFR 16.13) to demonstrate adequate operational and containment procedures and facilities prior to being approved to receive such imports? What would be the effects of such a provision.

Background: Professional laboratories generally have facilities for preventing the accidental discharge of pathogens and standard operational procedures (e.g. no studies on live fish and sterilization of all waste material) that minimize the possibility of pathogen escapement. Nevertheless, there is

concern that standards and periodic inspections of such laboratories would reduce the risk of accidental release of controlled pathogens.

11. Should a provision be included allowing the Director of the United States Fish and Wildlife Service to approve certain laboratories with established histories of competence and performance in fish pathology as Certifying Laboratories designated to certify the pathogen status of fish to be imported into the United States?

Background: Present regulations provide for designation of individuals only as Certifying Officials. It has been suggested that there should be provisions to exempt professional fish pathologists working in well-established laboratories from the need to apply individually for approval as a Certifying Official.

12. Should a provision be included prohibiting individuals from certifying the pathogen status of shipments in which the Certifying Official may have a vested interest? What would be the effects of such a provision?

Background: It has been argued that a conflict of interest exists if the result of a fish health inspection could cause in financial gain or loss or the possibility of such for the Certifying Official (inspector), or if the inspector has a financial or other interest in the fish being inspected. It is standard professional procedure and practice in other established inspection programs (e.g. USDA) to prohibit such conflicts of interest, or even the appearance of such conflicts.

Process for Developing Revised Regulations

This notice informs all interested parties that the Fish and Wildlife Service intends to revise the regulations pertaining to the importation of salmonid fishes and other fishes that may carry pathogens of salmonid fishes. Information has been requested concerning specific issues, a request made for additional suggestions, and opportunity provided for comment on the effects of possible modifications to the existing regulations. A schedule for public comment has been established.

Interested parties are invited to submit written comments to the Division of Fish Hatcheries. Comments may address any aspect of the existing regulations, possible revisions, and their present or potential impacts. No specific format is required. Details concerning the economic and environmental effects of possible revisions or suggested wording for the revised regulations will be especially useful. If sufficient interest and concern are expressed, the Fish and Wildlife Service will schedule public meetings at key locations to provide additional opportunities for comments.

After the conclusion of the comment period for this notice of intent, proposed regulations will be developed by the Fish and Wildlife Service and announced in the **Federal Register**. Public comment will be invited on the proposed regulations and, if necessary, public meetings scheduled. Final regulations reflecting all public comments, and the stewardship responsibilities of the Fish and Wildlife Service will be prepared and published subsequently in the **Federal Register**.

List of Subjects in 50 CFR Part 16.

Animal diseases, Fish, Freight, Imports, Transportation, Wildlife.

Dated: August 8, 1989.

Richard M. Smith,

Acting Deputy Director.

[FR Doc. 89-19321 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 18 and 228

RIN 1018-AB16

Incidental Take of Endangered, Threatened and Other Depleted Marine Mammals; Definition of Citizen of the United States

AGENCIES: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: Regulations are proposed to modify the definition of " 'Citizen of the United States' and 'U.S. citizen' " in 50 CFR 18.27(c) and 228.3 by deleting the requirement that corporations and similar entities be controlled by individuals who are citizens of the United States. Limiting the definition of organizations "controlled by U.S. citizens" was incorporated without explanation when regulations implementing section 101(a)(5) of the Marine Mammal Protection Act were promulgated in 1982. Without the proposed change, Federal revenues from offshore leasing bonus bids could be reduced by up to several hundred million dollars annually.

DATES: Comments on the proposed rule must be received by September 18, 1989.

ADDRESSES: Comments should be submitted to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop—820 Arlington Square, 18th and C Streets NW., Washington, DC 20240. Documents supporting this proposed rule are available for inspection at the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Room 840, Arlington Square Building, 4401 North Fairfax Drive, Arlington, VA, telephone: (703) 358-1718.

FOR FURTHER INFORMATION CONTACT: Robert A. Peoples, Jr., Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, (703) 358-1718, or Patricia Montanio, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, (301) 427-2322.

SUPPLEMENTARY INFORMATION: Revision of 50 CFR 18.27 and part 228 is proposed to allow Letters of Authorization to take small numbers of marine mammals incidental to a specific activity pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972 (Act, 16 U.S.C. 1361 *et seq.*) to be granted to corporations and similar entities organized under laws of the United States or any State law, but not controlled by citizens of the United States. The current limitation of the definition to organizations "controlled by U.S. citizens" was incorporated without explanation when the general regulations implementing section 101(a)(5) were first promulgated by the National Marine Fisheries Service in 1982. The requirement that corporations and similar entities be organized under United States or any State law, and therefore subject to United States jurisdiction, will be retained to ensure these entities are accountable for their actions and to maintain consistency with the Act.

The Act prohibits all taking of marine mammals, including harassment, unless specifically allowed by the Act or by procedures established under provisions of the Act. In 1981, the Act was amended to add section 101(a)(5) authorizing the Secretaries of Commerce and the Interior to allow "citizens of the United States" to engage in specified activities (other than commercial fishing) within specific geographic regions during periods of not more than five consecutive years that result in the incidental, but not intentional, taking of small numbers of non-depleted marine mammals.

In early 1982, the National Marine Fisheries Service proposed "Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities" (50 CFR part 228) to implement the new provisions of the Act (47 FR 9027). In response to comments, a definition of " 'Citizens of the United States' and 'U.S. citizen' " was added without explanation or opportunity for comment in the final regulations published in May 1982 (47 FR 21248). "Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities" (50 CFR 18.27) which were virtually identical to those adopted by the National Marine Fisheries Service were promulgated by the U.S. Fish and Wildlife Service in July 1983 (48 FR 31220).

Both sets of regulations establish standards and procedures for determining whether the taking of small numbers of non-depleted marine mammals incidental to specified activities (other than commercial fishing) should be allowed and included the following definition:

> "Citizens of the United States" and "U.S. citizens" means individual U.S. citizens or any partnership, corporation, association, or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) and controlled by individuals who are U.S. citizens. U.S. Federal, State, and local government agencies shall also constitute citizens of the United States for purposes of this section.

Under this definition, foreign controlled corporations and similar entities, including their subsidiaries, cannot obtain Letters of Authorization necessary to proceed with specific activities that may result in the incidental taking of marine mammals under United States jurisdiction.

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service jointly proposed to amend the incidental take framework regulations on March 15, 1988 (53 FR 8473). That rule, which did not address the definition of citizen of the United States, was proposed to implement amendments to section 101(a)(5) of the Act adopted in 1986. The 1986 amendments authorized the issuance of specific regulations for the incidental take of depleted, as well as non-depleted, marine mammals.

In commenting on the proposed rule, the American Petroleum Institute, Minerals Management Service and several other entities stated that the existing definition of citizen of the United States as applied to a corporation is unduly restrictive since it requires control by American citizens. The commenters also noted that the definition of citizen of the United States in the marine mammal incidental take regulations is inconsistent with regulatory practice under the Outer Continental Shelf Lands Act which requires only that a corporation be organized under the laws of the United States (i.e., be subject to United States jurisdiction). They believe that the Congress intended that all holders of offshore leases be permitted to receive Letters of Authorization under the Act and, therefore, that the definition in the marine mammal regulations should be consistent with Outer Continental Shelf Lands Act regulatory practice.

The clear language in section 101(a)(5) of the Marine Mammal Protection Act only authorizes United States citizens to take marine mammals incidental to specified activities (other than commercial fishing). However, there is no suggestion in the Act or its legislative history that Congress intended to preclude corporations or similar entities organized under United States or any State law from qualifying as United States citizens.

Generally, corporations and similar entities that are organized under, and therefore subject to, United States or State laws are considered persons in a legal sense and are afforded many of the same rights as individual citizens of the United States regardless of who owns or controls the entity. Similarly, for purposes of section 101(a)(5) of the Act, we are proposing that corporations and similar entities organized under United States or State laws be considered citizens of the United States without restriction as to controlling interest.

In extending this definition to include all corporations and similar entities, it is desirable to avoid situations where non-citizens can circumvent the intent of the statute to limit the availability of incidental take Letters of Authorization to United States citizens. By similar entities, therefore, the Services mean only those entities recognized under United States or State laws to be legal persons for purposes of legal jurisdiction and legal liability. Most, if not all, corporations or similar entities created pursuant to State or Federal law would meet this requirement. Therefore, reference to partnerships and associations are proposed to be deleted from the definition. This would not preclude individuals who are United States citizens or corporations organized under United States or any State law from forming a partnership or other associations since they would be considered as applying in their capacity as United States citizens or corporations.

The requirement in the definition of "United States citizen" that corporations and similar entities must be controlled by individuals who are United States citizens appears to be unduly restrictive without any corresponding benefits to marine mammals. As has been noted, the requirement that corporations be controlled by individuals who are United States citizens is inconsistent with regulatory practice under the Outer Continental Shelf Lands Act. In addition, it could adversely affect otherwise acceptable activities and substantially reduce revenues from the sale of offshore oil and gas leases. Elimination of this limitation in the definition of United States citizen appears to be warranted and desirable.

Proposed Regulatory Change

These regulations propose to amend the definition of "citizen of the United States and U.S. citizen" in 50 CFR 18.27(c) and 228.3 by deleting the requirement that corporations and similar entities be "controlled by individuals who are U.S. citizens." Consistent with the preamble discussion, it is also proposed that the specific reference to partnerships and associations in the definition be deleted. These revisions are proposed to allow Letters of Authorization to incidentally take marine mammals to be granted to corporations and similar entities not controlled by United States citizens. The requirement that corporations and similar entities be organized under United States or any State law, and therefore subject to United States jurisdiction, would be retained.

Classification

The Department of the Interior, as the lead agency, has prepared a draft environmental assessment of this proposed rule. A determination will be made at the time of the final rule as to whether or not this is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Section 101(a)(5) of the Marine Mammal Protection Act, and implementing regulations, require that the impacts of any authorized incidental take on marine mammal populations be negligible and that there be no unmitigable adverse impacts on their use for subsistence purposes. The proposed modification of the definition of "citizen of the United States" does not alter this standard.

It has been determined that these regulations constitute a major rule as defined in Executive Order 12291.

Without the proposed definitional change, Federal revenues from offshore leasing bonus bids are likely to be reduced by more than $100 million annually. However, considering time constraints and the nature of the rulemaking, the Office of Management and Budget, consistent with section 6(a)(4) of the Executive Order, has waived the requirement for preparation of a Regulatory Impact Analysis.

The Department of the Interior has certified under terms of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the proposed regulations will not have a significant economic impact on a substantial number of small entities. Most requests for specific regulations to incidentally take marine mammals under the revised regulations are, as at present, likely to be from the oil and gas and related industries; they would not be considered small entities under the Regulatory Flexibility Act.

This rule does not contain an information collection requirement subject to Office of Management and Budget clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The analyses under the National Environmental Policy Act, Executive Order 12291 and the Regulatory Flexibility Act are available for review (see **ADDRESSES**).

The primary author of this proposal is Robert A. Peoples, Jr., Department of the Interior.

List of Subjects

50 CFR Part 18

Administrative practice and procedure, Alaska, Exports, Imports, Intergovernmental relations, Marine mammals, Transportation.

50 CFR Part 228

Administrative practice and procedure, Marine mammals, Outer continental shelf oil and gas exploration.

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend 50 CFR parts 18 and 228 as shown below.

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Section 18.27(c) is amended by revising the definition of "Citizens of the United States" and "U.S. citizens" to read as follows:

§ 18.27 Regulations governing small takes of marine mammals incidental to specified activities.

* * * * *

(c) * * *

Citizens of the United States and *U.S. citizens* means individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, State and local government agencies shall also constitute citizens of the United States for purposes of this section.

* * * * *

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

3. The authority citation for 50 CFR part 228 continues to read as follow:

Authority: 16 U.S.C. 1361 *et seq.*

4. Section 228.3 is amended by revising the definition of " 'Citizens of the United States' and 'U.S. citizens' " with the following:

§ 228.3 Definitions

* * * * *

Citizens of the United States and *U.S. citizens* means individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, State and local government agenices shall also constitute citizens of the United States for purposes of this section.

* * * * *

Dated: June 27, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

James W. Brennan,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 89-19267 Filed 8-16-89; 8:45 am]

BILLING CODES 3510-22-M and 4310-55-M

Notices

Federal Register
Vol. 54, No. 158
Thursday, August 17, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 11, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Extension

- Animal and Plant Health Inspection Service

Prohibited and Restricted Importation of Meats, Animals, Animal Byproducts, Poultry, Organisms and Vectors into the United States
VS 16–3, VS 16–25, VS 16–26
Recordkeeping; On occasion; Quarterly
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 6,291 responses; 12,803 hours; not applicable under 3504(h)
Harry A. Kryder, (301) 436–7885.

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 89–19274 Filed 8–16–89; 8:45 am]
BILLING CODE 3410–01–M

Office of International Cooperation and Development

Cooperative Agreement Intent; Florida A&M University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into an agreement with Florida A&M University, in conjunction with the International Science and Education Council, to co-sponsor an "International Goat Symposium."

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1989 (FY 1989) to support Florida A&M University in co-sponsoring an International Goat Symposium, 22–26 October 1989. The symposium will provide a means for scientists, educators, and small farmers to exchange information related to goat research, production and marketing techniques being utilized in developed and developing nations. Targeted participants include students from 1890 and 1862 Land-Grant Universities, farmers from the Southeastern United States, and scientists from East and West Africa, Latin and South America, the Caribbean Basin, Europe and Asia.

Assistance will be provided only to the University which will utilize funds to support preparations for, and conduct of the symposium.

Based on the above, this is not a formal request for application. An estimated $5,000 will be available in FY 1989 as partial support for this project.

Information on proposed Agreement #58–319R–9–012 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Dated: August 10, 1989.

Nancy J. Croft,
Contracting Officer.

[FR Doc. 89–19293 Filed 8–16–89; 8:45 am]
BILLING CODE 3410–DP–M

Cooperative Agreement Intent; University of Arkansas

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to award a Grant to the University of Arkansas to support the "1989 Farming Systems Research Symposium."

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1989 (FY 1989) to provide funding support to the University of Arkansas for conduct of the "1989 Farming Systems Research Symposium. This symposium is recognized as the major international forum for the exchange of research experiences and the development of new approaches related to farming systems research and extension.

Assistance will be provided only to the University which will utilize funds to support the publication and staff support costs of the symposium.

Based on the above, this is not a formal request for application. An estimated $40,000 will be available in FY 1989 as partial support for this symposium.

Information on proposed Grant #59–319R–9–002 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Dated: August 10, 1989.

Nancy J. Croft,
Contracting Officer.

[FR Doc. 89–19294 Filed 8–16–89; 8:45 am]
BILLING CODE 3410–DP–M

Cooperative Agreement Intent: University of Georgia

AGENCY: Office of Interantional Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into an agreement with the University of Georgia Research Foundation to develop agroclimatological strategies for Dryland Agriculture.

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Public Law 99–198).

OICD anticipates the availability of funds in fiscal year 1989 (FY 1989) to support the University of Georgia in its program to provide coordination and network linkage to several projects dealing with agroclimatic resource strategies in dryland agriculture, such as AGRHYMET, ICRISAT Sahelian Center, Famine Early Warning System and TAMSAT.

Assistance will be provided only to the University which will utilize funds to support the proposed coordination and network linkage.

Based on the above, this is not a formal request for application. An estimated $15,000 will be available in FY 1989 as partial support for this project.

Information on proposed Agreement #58–319R–9–013 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Dated: August 10, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89–19295 Filed 8–16–89; 8:45 am]

BILLING CODE 3410–DP–M

Office of International Cooperation and Development

Cooperative Agreement Intent: Old Dominion University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to award a Grant to Old Dominion University for publication of the newsletter on parasitic plants entitled HAUSTORIUM.

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Public Law 99–198).

OICD anticipates the availability of funds in fiscal year 1989 (FY 1989) to provide funding support to Old Dominion University for continued publication of the newsletter, HAUSTORIUM; the reprinting of the 1957 USDA bibliography on *Striga asiatica* (witchweed), including its update; and establishing a literature collection on *Striga* in Africa.

Assistance will be provided only to the University which will utilize funds to partially support the publication of the newsletter and bibliography reprint, as well as establishing the literature collection.

Based on the above, this is not a formal request for application. An estimated $10,511 will be available in FY 1989 as partial project support. Additional funding may be awarded during FY 1990 and FY 1991 depending on availability.

Information on proposed Grant #59–319R–9–003 may be obtained from: USDA/OICD/Management Services Branch, Washington, DC 20250–4300

Dated: August 10, 1989.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 89–19296 Filed 8–16–89; 8:45 am]

BILLING CODE 3410–DP–M

Rural Electrification Administration

Intention to Prepare an Environmental Impact Statement and Hold Scoping Meeting; Associated Electric Cooperative, Inc.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to prepare environmental impact statement and hold scoping meetings.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR part 1794) may prepare a Draft Environmental Impact Statement (DEIS) and subsequently a Final Environmental Impact Statement (FEIS) for its Federal action related to a proposal by Associated Electric Cooperative, Inc., (Associated) of Springfield, Missouri to participate in constructing a 345 kV transmission line project. REA may consider providing financing assistance, construction approval, and/or approval of contractual agreements between Associated and other parties that would result in construction of the project. Notice is also given of public scoping meetings to be held in conjunction with the review of the possible environmental consequences and the determination of potentially significant environmental issues associated with the REA Federal action related to the proposed project.

FOR INFORMATION CONTACT: The primary point of contact for this project is Mr. Alex M. Cockey, Jr., Director, Southeast Area—Electric, Rural Electrification Administration, room number 0270, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250–1500, telephone number (202) 382–8436. For information on specific aspects of Associated's proposal contact Mr. Charles Means. Associated Electric Cooperative, Inc., P.O. Box 754, Springfield, Missouri 65801, telephone number (417) 881–1204.

SUPPLEMENTARY INFORMATION: Associated tentatively proposes to participate in a project to construct 105 miles of 354 kV transmission line and modify three existing substations. The line would begin at the Cooper Nuclear Station in Nemaha County, Nebraska, traverse east through Atchison, Holt, Nodaway, Andrew, and Gentry Counties, Missouri, to the Fairport Substation in De Kalb County, Missouri and southwest to the St. Joseph Substation in Andrew County, Missouri. The Cooper, Fairport and St. Joseph substations will be upgraded to accommodate the 345 kV transmission line.

Possible participants in the project beside Associated may include the Nebraska Public Power District, Omaha Public Power District, the Lincoln Electric System, Kansas City Power and Light, St. Joseph Light and Power Company, and Iowa Power and Light Company.

Alternatives to be considered by REA and Associated may include, among other options: (a) No action, (b) load management, (c) individual versus joint participation, (d) new generation and (e) various transmission line support structures and alternative corridors.

Public scoping meetings will be held at Northwest Missouri Electric Cooperative, 401 Highway 71, Savannah, Missouri, at 7:00 pm on Tuesday, September 26, 1989, and at the Fairfax Reorganized R–3 School, U.S. Highway 59, Fairfax, Missouri, at 7:00 pm on Wednesday, September 27, 1989.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meetings or in writing within 30 days after the September 27 meeting to REA at the address provided in this notice.

Government agencies, other organizations, and the public are invited to participate in the planning and analysis of the proposed project. Issues to be discussed at the scoping meetings include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of significant environmental issues and the scope of those issues, delineation of issues which are not significant and do not warrant detailed study, and requirements that REA or other Federal, State of Missouri, or local agencies may conduct concurrently with the environmental review of the proposed project.

To be presented at the meeting will be a Macro-Corridor Study and an Alternative Evaluation prepared by Associated and Burns & McDonnell and reviewed by REA. The Macro-Corridor

Study and Alternative Evaluation are available for public review at REA or Associated at the addresses provided herein. They can also be reviewed at the following libraries:

Rolling Hills Regional Library, 514 West Main Street, Savannah, Missouri 64485, Telephone: (816) 324–4569

Atchison County Library, 200 South Main Street, Rock Point, Missouri 64482, Telephone: (816) 744–5404

Maryville Public Library, 5th and Main Street, Maryville, Missouri 64468, Telephone: (816) 582–5281

Gentry County Library, 2nd and Park Street, Stanberry, Missouri 64489, Telephone: (816) 783–2335.

From information provided in the Macro-Corridor Study, the Alternative Evaluation, input from local, State of Missouri and Federal agencies, and the public, Associated will prepare an Environmental Analysis to be submitted to REA for review. If significant effects are not evident based on a review of the analysis, REA will prepare an environmental assessment to determine if the preparation of an Environmental Impact Statement (EIS) is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of the environmental procedures as prescribed by CEQ, and REA environmental policies and procedures as applicable.

Dated: August 11, 1989.

Frank W. Bennett,

Acting Assistant Administrator—Electric.

[FR Doc. 89–19344 Filed 8–16–89; 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

Green Knoll Critical Area Treatment (CAT) RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Green Knoll Critical Area Treatment (CAT) RC&D Measure, Somerset, New Jersey.

FOR FURTHER INFORMATION CONTACT: Barbara T. Osgood, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246–1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Barbara T. Osgood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for providing for bank stabilization of a stream.

The planned works of improvement include the installation of riprap and seeding.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barbara T. Osgood.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: August 3, 1989.

Carlos F. Henning,

Acting State Conservationist.

[FR Doc. 89–19358 Filed 8–16–89; 8:45 am]

BILLING CODE 3410–16–M

Warren Township Middle School Drainage RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Warren Township Middle School Drainage RC&D Measure, Somerset, New Jersey.

FOR FURTHER INFORMATION CONTACT: Barbara T. Osgood, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246–1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Barbara T. Osgood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for providing for the land grading and shaping of an athletic field to control surface runoff.

The planned works of improvement include the installation of a diversion, waterway, subsurface drain, and revegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Barbara T. Osgood.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.091, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: August 3, 1989.

Carlos F. Henning,

Acting State Conservationist.

[FR Doc. 89–19357 Filed 8–16–89; 8:45 am]

BILLING CODE 3410–16–M

Brashears Creek Watershed, Kentucky; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Brashears Creek Watershed, Henry, Shelby, and Spencer Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Randall W. Geissler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606–233–2759.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Randall W. Geissler, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for erosion reduction and protection of municipal and industrial water quality. The planned works of improvement include nineteen waste management facilities and accelerated technical and financial assistance for land treatment.

A limited number of copies of the Finding of No Significant Impact (FONSI) are available to fill single copy requests at the above address. Basic data developed during development of the environmental assessment are on file and may be reviewed by contacting Randall W. Geissler.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No., 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: August 10, 1989.

Clyde L. Goodman,

Deputy State Conservationist.

[FR Doc. 89–19319 Filed 8–16–89; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: The Impact of Aids on the U.S. Army: Interviews with Seropositive Applicants for Military Service; No Form; and OMB Control Number 0704–0282.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 75 hours.

Frequency of Response: One response per respondent.

Number of Respondents: 1,200.

Annual Burden Hours: 1,900.

Annual Responses: 1,200.

Needs and Uses: Interview survey is to be used by contractor trained personnel to interview military recruit applicants who have been identified as positive for HIV to determine risk factors for the disease. The interview will be conducted in a single session by contractor trained interviewers who will not know the antibody status of the subject. The survey instrument and analysis and summary files will not contain personal identifier information and linking of individuals to their specific responses will not be possible. Information gained will be of unique importance for designing intervention programs, for targeting high risk groups for screening and health education and for assessing the efficacy of prevention efforts. Data currently available may not reflect the current state of the epidemic. This research effort will provide a broad-based, national surveillance system for determining the geographical spread of the epidemic and the risk factors most associated with its spread.

Affected Public: Individuals or households.

Frequency: One per respondent.

Respondent's Obligation: This is a voluntary survey.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: August 14, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 89–19369 Filed 8–16–89; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 247, Transportation, and Related Clauses in § 252.247; DFSC Form 1890; and OMB Control Number 0704–0245.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 1 Hour.

Frequency of Response: On occasion.

Number of Respondents: 28,750.

Annual Burden Hours: 64,700.

Annual Responses: 64,700.

Needs and Uses: This request concerns information collection requirements required to support contracting for transportion and related services in the DoD FAR Supplement and Service Supplements.

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: August 14, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19370 Filed 8-16-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency.

ACTION: Notice of Membership of the Defense Contract Audit Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE: August 17, 1989.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Director, Personnel and Security Division, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia, 202/274-5798.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board:

Mr. Roy Heidemann, Assistant Director, Operations, Defense Contract Audit Agency, Chairperson

Mr. William Sharkey, Assistant Director, Policy and Plans, Defense Contract Audit Agency, member

Mr. John van Santen, Assistant Director, Resources, Defense Contract Audit Agency, member

Regional Performance Review Board:

Mr. Harvey Della Bernarda, Regional Director, Eastern, Defense Contract Audit Agency, Chairperson

Mr. Joel Valenzuela, Regional Director, Central Defense Contract Audit Agency, member

Mr. Gary Neil, Director, Field Detachment Defense Contract Audit Agency member

Dated: August 14, 1989.

Linda M. Bynum,

Alternate OSD, Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-19372 Filed 8-16-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 11, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel will meet on September 8, 1989, from 8:00 a.m., to 5:00 p.m., at HQ Strategic Air Command (SAC), Offutt AFB NE.

The purpose of this meeting will be to facilitate the exchange of information amongst Scientific Advisory Board members and SAC staff on strategic missile programs. The meeting at HQ Strategic Air Command (SAC) will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-19320 Filed 8-16-89; 8:45 am]

BILLING CODE 3910-01-M

Office of the Inspector General

Privacy Act of 1974; New System of Records

AGENCY: Office of the Inspector General, DOD.

ACTION: Notice of a new system of records subject to the Privacy Act.

SUMMARY: The Office of the Inspector General, Department of Defense, is adding a new system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 522a).

DATE: This proposed action will be effective without further notice on or before September 18, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202-2884.

FOR FURTHER INFORMATION CONTACT: Dominick D. Wasielewski, (202) 697-6035, AUTOVON: 227-6035.

SUPPLEMENTARY INFORMATION: The complete inventory of record system notices subject to the Privacy Act for the Office of the Inspector General, DoD, has been published in the **Federal Register** to this date as listed:

50 FR 22279 May 29, 1985 (Compilation, changes follow)
52 FR 26547 Jul 15, 1987
52 FR 35754 Sep 23, 1987
54 FR 24377 Jun 7, 1989

A new system report, as required by 5 U.S.C. § 552a(r) of the Privacy Act, was submitted on August 9, 1989, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: August 14, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG-11

SYSTEM NAME:

Budget Information Tracking System (BITS).

SYSTEM LOCATION:

Department of Defense (DoD), Office of the Assistant Inspector General for Administration and Information Management, Financial Management Directorate, 400 Army Navy Drive, Room 567A, Arlington, VA 22202-2884.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

All DoD Inspector General employees who participate in IG Travel, Permanent Change of Station (PCS), Awards, and Training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cost records of IG employees who have been approved for Temporary Duty and Blanket Travel; employee training; Permanent Change of Station (PCS); and employee cash awards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95-452, the Inspector General Act of 1978, as amended; 10 U.S.C. 133, Secretary of Defense: Appointment, Powers, Duties and Delegation by; DoD Directive 5106.1,

"Inspector General of the Department of Defense" (32 CFR part 373); and Executive Order 9397.

PURPOSE(S):

Information is used in determining current year execution and future budgetary requirements for the Office of the Inspector General. Personal information such as individual's name, Social Security Number and grade/rank are used as follows:

a. Tracking temporary duty travel costs. Personal information, individual's name and Social Security Number are used as unique identifiers used in querying the system for cost data.

b. Tracking blanket travel costs and effective dates.

c. Tracking training costs and requirements.

d. Tracking Permanent Change of Station (PCS) costs.

e. Tracking cash award costs. Personal information, grade/rank are used in determining the cash award ceiling and range available to the individual proposing the cash award.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Office of the Inspector General's compilation of record system notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks, stored in a fireproof safe. Paper records are forwarded to the appropriate office within the Inspector General for storage.

RETRIEVABILITY:

Records are retrieved by Social Security Number. A specified data element or a combination thereof contained in this system of records can be used for accessing information.

SAFEGUARDS:

Access to the system is protected/restricted through the use of assigned user identification/passwords for entry into system modules.

RETENTION AND DISPOSAL:

Records are maintained for the current fiscal year. Records are then archived and stored in a fireproof safe for three years. At the end of the third year, the archived disks and paper records are destroyed.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, FOIA/PA Division, Office of the Assistant Inspector General for Investigations, 400 Army Navy Drive, Room 1016, Arlington, VA 22202–2884.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Director, FOIA/PA Division, Office of the Inspector General for Investigations, 400 Army Navy Drive, Arlington, VA 22202–2884. The request should contain the full name, address, and Social Security Number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Director, Office of the Inspector General for Investigations, 400 Army Navy Drive, Arlington, VA 22202–2884. The request should contain the full name, address, and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

Agency rules for accessing records and for contesting contents and appealing initial IG determinations by the individual concerned are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data maintained in the system is obtained directly from the individual on the following forms:

A. Request to Temporary Duty Travel Form, provided to the Travel Section with information obtained from the individual traveler;

b. Request for Permanent Change of Station Form, provided by the Personnel and Security Directorate and Travel Section with information obtained from the individual;

c. Request for Training Form, provided by the Training Officer within each segment of the Office of the Assistant Inspector General with information obtained from the individual; and

d. Incentive Awards Nomination and Action Form, provided by the Personnel and Security Directorate with information obtained from an individual's supervisor and personnel records.

To the extent that a follow-up to resolve discrepancies is required, information is collected directly from the individual or the appropriate office within the Office of the Inspector General on Department of Defense (DD) Forms 1610 and 1614, Standard Form 182, and IG Form 1400.430–3.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–19371 Filed 8–16–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before September 18, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B.Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each

proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 14, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Existing
Title: Private Schools Survey
Frequency: Biennially/Annually
Affected Public: Non-profit institutions; Small businesses or organizations
Reporting Burden:
Responses: 25,000
Burden Hours: 12,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will obtain basic information about private elementary and secondary schools. The Department will use this information to build a universe frame of schools to serve as a sampling frame for surveys of private schools; and to conduct a sample survey to collect early estimates of key statistics (e.g. total number of private schools, teachers and students) annually.

[FR Doc. 89-19318 Filed 8-16-89; 8:45 am]
BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Grants and Cooperative Agreement Awards; Texas

AGENCY: Bartlesville Project Office, Department of Energy.

ACTION: Notice of intent to negotiate a grant with the State of Texas (Annex V).

SUMMARY: "Microbial Enhanced Oil Recovery (MEOR) Research." The U.S. Department of Energy (DOE), Bartlesville Project Office, through the DOE, Idaho Operations Office, intends to negotiate on a noncompetitive basis a cost-share grant with the State of Texas. All technical and scientific aspects will be conducted by the University of Texas at Austin (UTA) through a subgrant. The action is prompted by the consummation of Annex V to the Memorandum of Understanding between the DOE and the State of Texas which defines the research proposal and the participants, and specifies cost sharing. The grant will be utilized by the University of Texas at Austin to enhance the understanding of MEOR processes through experimentation as well as simulation of bacteria transport and oil recovery mechanisms. To accomplish this the following four tasks will be conducted: (1) The strain initially chosen for this study, *Bacillus licheniformis* JF-2, will be characterized with respect to its growth characteristics and its ability to generate biosurfactants, (2) transport studies in cores will be conducted to compare with the model results, (3) a computer model will be formulated to simulate bacterial transport growth in porous media, and (4) the bioengineering aspects of specific MEOR processes will be evaluated using the simulator. The participant shall further transfer the learned technologies to oil operators through publications and workshops. The University of Texas at Austin will make available to this research project the state well records, geological data archives, well samples and computer resources.

The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), (B) and (C). The activities proposed in Annex V to the agreement between the U.S. Department of Energy and the State of Texas are in support of a public purpose and are as directed by the agreement. This activity would be conducted by the State of Texas using their own resources, however, DOE support of the activity would enhance the public benefits to be derived by allowing full development and verification of a computer simulator for MEOR modeling and evaluation. DOE knows of no other entity which is conducting or planning to conduct such an activity. The applicant is a unit of Government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The grant term is for two years at an estimated cost of $360,328 which will be cost shared equally by DOE and the State of Texas. Public response may be addressed to the contract specialist stated below.

CONTACT: U.S. Department of Energy, Idaho Operations Office 785 DOE Place, Idaho Falls, Idaho 83402, Trudy A. Thorne, Contract Specialist (208) 526-9519.

Dated: August 1, 1989.

J. Roger Gonzales,

Director, Contracts Management Division

[FR Doc. 89-19383 Filed 8-16-89; 8:45 am]
BILLING CODE 6450-01-M

Grants and Cooperative Agreement Awards; Texas

AGENCY: Bartlesville Project Office, Department of Energy.

ACTION: Notice of intent to negotiate a grant with the State of Texas (Annex VI).

SUMMARY: "Development of Nuclear Magnetic Resonance Imaging/Spectroscopy for Improved Petroleum Recovery." The U.S. Department of Energy (DOE), Bartlesville Project Office, through the DOE, Idaho Operations Office, intends to negotiate on a noncompetitive basis, a cost-share grant with the State of Texas. All technical and scientific apsects will be conducted by the Texas A&M University through a subgrant. The action is prompted by the consummation of Annex VI to the Memorandum of Understanding between the DOE and the State of Texas which defines the research proposal and the participants, and specifies cost sharing. The grant will be used by the Texas A&M University for the development and application of Nuclear Magnetic Resonance Imaging (NMRI) methods for determining rock-fluid and petrophysical properties and for fundamental studies of multiphase flow behavior in porous media. Specific objectives are development of NMRI procedures for: (1) Measuring porosity, permeability, pore size distribution, capillary pressure, and wetting characteristics, (2) improvement of the methods for determining two- and three-phase relative permeability functions, (3) development of a better understanding of dispersed phase displacement processes, and (4) determination of saturation distributions and fingering during miscible displacements. The learned technologies will be transferred to oil operators through publications and workshops. The Texas A&M University will make available to this research project the facilities of the Engineering Imaging Laboratory. The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), (b), (C) and (D). The activities proposed in Annex VI to the agreement between the U.S. Department of Energy and the State of

Texas are in support of a public purpose and are as directed by the agreement.

This activity would be conducted by the State of Texas using their own resources, however, DOE support of the activity would enhance the public benefits to be derived by allowing more thorough and more rapid development of NMRI methodologies applicable to reservoir characterization. DOE knows of no other entity which is conducting or planning to conduct such an activity. The applicant is a unit of Government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction thereby precluding DOE provision of support to another entity. The State of Texas through its subgrantee, Texas A&M University, has exclusive domestic capability to perform the activity successfully based on unique equipment, proprietary data, and technical expertise. The applicant has access to data relative to the proposed activities that will be identified and structured and made available to developers, decision-makers, and researchers. The applicant has access to the Engineering Imaging Laboratory and technicians and researchers skilled in NMRI. The grant term is for three years at an estimated value of $1,870,000 which will be cost shared equally by DOE and the State of Texas. Public response may be addressed to the Contract Specialist stated below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Trudy A. Thorne, Contract Specialist (208) 526–9519.

Dated: August 1, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89–19384 Filed 8–16–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent of Award Grant to Uni-Frac, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE15998 to Uni-Frac, Inc., to fund testing of the unique Uni-Frac distillation Column under six different operating conditions.

Scope: This grant will aid in providing funding to Uni-Frac, Inc., for the purpose of testing the invention at the world renowned University of Texas Separations Research Center (SRC) to determine the efficiency of the Uni-Frac Column under six separate operating conditions in order to quantitatively assess its significance. Conventional distillation column designs do not allow uni-directional flow of liquids across the plate. The Uni-Frac Column has solved this problem. This new form of plate design in a distillation column will substantially increase the efficiency for separating liquids. The crude oil processing industry, petro-chemical industry, and a number of other industries are highly sensitive to the performance of distillation columns. In the petro-chemical industry alone, the National Institute of Standards and Technology (NIST) estimates savings on a global scale from the adoption of Uni-Frac Column technology at 21 million barrels of oil annually. Another large use for the technology would be for distilling liquid air that is needed to produce oxygen for the iron and steel industry. Distillation is widely employed as a key unit of operation in many industries therefore, the Uni-Frac Column technology could lead to many other potential energy savings applications.

Eligibility: Based on acceptance of an unsolicited application, eligibility of this award is being limited to Trent J. Parker, Uni-Frac, Inc., a private corporation that invented and holds the patent on the Uni-Frac Column. It has been determined that this project has high technical merit, representing an innovative technology which has a strong possibility of adding to the national energy resources.

The term of this grant shall be for 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement of Operations, Attn: Richard E. Leotta, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–19385 Filed 8–16–89; 8:45 am]

BILLING CODE 6450–01–M

Senior Executive Service; Performance Review Board

ACTION: Amendment to the SES Performance Review Board Appointments.

SUMMARY: This notice lists the additional members to serve on the Performance Review Board standing register for the Department of Energy. This supplements the listings published in 52 FR 32165, on August 26, 1987, and 52 FR 34980, on September 16, 1987, as amended by our letter of August 10, 1988.

EFFECTIVE DATE: These appointments are effective as of July 31, 1989.

The additional names for the SES Performance Review Board are as follows:

James A. Stout
Marvin Klinger
Alan J. Streb
Gail dePlanque
William L. Barker
Anthony Lane
Mary J. Hutzler
David Hendrie
Denise F. Swink
John S. Wilson
Ignacio Resendez
Grover L. Allen
David Pye
James K. Magruder
William P. Snyder
Milt Lorenz
Thomas H. Isaacs
Ralph Stein
Terry A. Vaeth
J. J. Wagoner
James Davies

Issued in Washington, DC on August 10, 1989.

Vito A. Magliano,

Executive Secretary, Executive Personnel Board.

[FR Doc. 89–19386 Filed 8–16–89; 8:45 am]

BILLING CODE 1450–01–M

Energy Information Administration

Changes to DOE Energy Information Reporting and Record-keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 et seq.) for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the DOE's Office of Management and Administration, are not included in these notices.

During the third quarter of fiscal year 1989 (April 1, 1989 through June 30, 1989), changes were made to the October 1, 1988 inventory of DOE information collections, which was published in the **Federal Register**, 53 FR 48287, (November 30, 1988). Changes during the first quarter were published in the **Federal Register**, 54 FR 6743, (February 14, 1989) and changes made during the second quarter were published in 54 FR 19430 (May 5, 1989). The third quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Etta Harris, EI-73, Energy Information Administration, Mail Stop 1H-023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI-231, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586-8800.

Statutory Authority: Sec. 3506, Pub. L. 96-511, Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3506.

Issued in Washington, D.C., August 11, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Energy Information Administration:				
None	None			

DOE No.	Title	OMB control No	Expiration date	CFR citation
Energy Information Administration:				
EIA-800	Weekly Refinery Report	19050165	04/30/92	
EIA-801	Weekly Bulk Terminal Report	19050165	04/30/92	
EIA-802	Weekly Product Pipeline Report	19050165	04/30/92	
EIA-803	Weekly Crude Oil Stocks Report	19050165	04/30/92	
EIA-804	Weekly Imports Report	19050165	04/30/92	
EIA-806	Weekly Crude Watch Report	19050165	04/30/92	
EIA-810	Monthly Refinery Report	19050165	04/30/92	
EIA-811	Monthly Bulk Terminal Report	19050165	04/30/92	
EIA-812	Monthly Product Pipleine Report	19050165	04/30/92	
EIA-812	Monthly Product Pipeline Report	19050165	04/30/92	
EIA-813	Monthly Crude Oil Report	19050165	04/30/92	
EIA-814	Monthly Imports Report	19050165	04/30/92	
EIA-816	Monthly Natural Gas Liquids Report	19050165	04/30/92	
EIA-817	Monthly Tanker and Barge Movement Report	19050165	04/30/92	
EIA-818	International Energy Agency Imports/Stocks-at-Sea Report	19050165	04/30/92	
EIA-820	Annual Refinery Report	19050165	04/30/92	
EIA-825	Petroleum Facility Operator Identification Survey	19050165	04/30/92	
Federal Energy Regulatory Commission:				
FERC-8	Underground Gas Storage Report	19020026	06/30/92	18CFR 260.11.
FERC-516*	Electric Rate Schedule Filings	19020096	11/30/85	18 CFR 35, Subpart A, 35.12-.16, 35.26, 35.30, 35.31, 292, 301.
FERC-550*	Oil Pipeline Rates: Tariff Filings	19020089	08/31/89	18 CFR 340-345 and 347.
FERC-561	Annual Report of Interlocking Positions	19020099	07/31/89	18 CFR 46.4, 46.6, 131.1.
FERC-588*	Emergency Natural Gas Sale, Transportation and Exchange Transactions.	19020144	06/30/91	18 CFR 284, Subpart I.
Fossil Energy:				
FE-748	Enhanced Oil Recovery Annual Report	19010291	06/30/92	
International Affairs and Energy Emergencies:				
IE-417R	Major Electric Power System Emergency Report	19010288	05/31/92	10 CFR 205.350-.353.

* Does not utilize a structured form.

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB control No.	Discontinued date	CFR citation
Energy Information Administration:				
EIA-846(F)	Manufacturing Energy Consumption Survey (Consumption and Related).	19050169	04/07/89	
EIA-846(S)	Manufacturing Energy Consumption Survey (Fuel Switching Capability).	19050169	04/07/89	
Federal Energy Regulatory Commission:				
FERC-519*	Electric Rates—Corporate Applications	19020082	06/30/89	18 CFR 33.

*Does not utilize a structured form.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Federal Energy Regulatory Commission:				
FERC-576*	Report by Certain Natural Gas Companies on Service Interruptions.	19020004	06/30/92	18 CFR 260.9.

*Does not utilize a structured form.

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE Nos. as previously listed	Changes
Energy Information Administration:	
EIA-846A/D, Manufacturing Energy Consumption Survey	Superseded EIA-846(F) and EIA-846(S) Forms are different from predecessors and approved for use through 4/30/91.
EIA-871A/F, Commercial Building Energy Consumption Survey	Modifications to forms and approved for use through 5/31/92.
Fossil Energy:	
FE-329R, Regulatory Reporting and Record-keeping Requirements	Superseded ERA-329R and OMB number changed to 1901-0297.
Federal Energy Regulatory Commission	
FERC-537, Pipeline Certificates	Revisions to regulations and approved for use through 4/30/92.
FERC-545, Gas Pipeline Rates: Rate change (non-formal)	Revisions to regulations and approved for use through 4/30/90.
FERC-555, Record Retention Requirements	Revisions to regulations and approved for use through 5/31/92.
FERC-569, Refund obligations (Producer)	Revisions to regulations and approved for use through 10/31/90.

[FR DOC. 89-19387 Filed 8-16-89; 8:45 am]
BILLING CODE 6550-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-588-000 et al.]

Idaho Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Idaho Power Co.

[Docket No. ER89-588-000]

August 8, 1989.

Take notice that on July 31, 1989, Idaho Power Company (Idaho) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 76 between Idaho and the Washington Water Power Company.

Idaho requests this cancellation to be effective as of June 1, 1989.

Comment date: August 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Co.

[Docket No. ER89-538-000]

August 8, 1989.

Take notice that on July 31, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing missing pages to the Agreement among the Modesto Irrigation District, the Turlock Irrigation District, City and County of San Francisco and Pacific Gas and Electric filed in this docket on July 6, 1989.

Comment date: August 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Co.

[Docket No. ER89-587-000]

August 8, 1989.

Take notice that Iowa Public Service Company (IPS) on August 3, 1989, tendered for filing an executed Capacity Purchase Agreement, dated March 13, 1989, whereby IPS will supply St. Joseph Light & Power Company (SJLP) with firm capacity and associated energy, commencing May 1, 1989 and continuing through April 1, 1995. IPS requests that the negotiated Agreement be made effective as of May 1, 1989.

Copies of the filing have been served on St. Joseph Light & Power Company and the Iowa Utilities Board.

Comment date: August 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Southeastern Power Administration

[Docket No. EF89-3011-000]

August 8, 1989.

Take notice that on June 22, 1989, Southeastern Power Administration (SEPA) tendered for filing modifications to Rate Schedule CAR-3-A for power from SEPA's Georgia System of Projects.

Comment date: August 22, 1989, in accordance with Standard Paragraph end of this notice.

5. Arizona Public Service Co.

[Docket No. ER89-265-000]

August 8, 1989.

Take notice that on August 2, 1989, Arizona Public Service Company (Arizona) tendered for filing additional revised rate sheets that were not

included in its July 26, 1989 filing in the above referenced docket.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Co.

[Docket No. ER89-589-000]

August 8, 1989.

Take notice that on August 3, 1989, Minnesota Power & Light Company (MP&L) tendered for filing the following agreements between MP&L and the Cooperative Power Association (CPA):

1. Supplement No. 4 to the Integrated Transmission Agreement between MP&L and CPA.
2. Input Line Agreement, which provides for the use and cost sharing of the liens that import power to the Integrated Transmission System.
3. Substation Lease Agreement, under which MP&L will lease a share of CPA's Hubbard 230 KV Substation.

MP&L states that these agreements are intended to resolve certain disputes regarding the manner in which CPA will meet its outlet facilities investment obligation for the import of power from its Coal Creek plant to the Integrated Transmission System. MP&L states that approval of these agreements will permit dismissal of appeals from FERC Opinion Nos. 263 and 263-A filed by both CPA and MP&L in the United States Court of Appeals for the District of Columbia Circuit. MP&L has requested waiver of the Commission's regulations in order to permit the agreements to become effective as of May 1, 1988, in accordance with the intention of the parties.

Comment date: August 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. O'Brien (Riverdale) Cogeneration, Inc.

[Docket No. QF89-298-000]

August 8, 1989.

On July 21, 1989, O'Brien (Riverdale) Cogeneration, Inc. (Applicant), of 225 South Eighth St., Philadelphia, PA 19106, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Riverdale, Illinois. The facility will consist of one or two boilers, a heat recovery steam generator and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be utilized by the Acme Steel Company in a steel pickling process and for space heating. The electric power production capacity of the facility will be 14 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in April 1990. Operation of the facility is planned to commence in July 1991.

Comment date: Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Co. v. Town of Concord, Massachusetts

[Docket No. EL89-43-000]

August 8, 1989.

Take notice that on August 4, 1989, Boston Edison Company (Edison) filed a complaint pursuant to sections 205 and 307(a) of the Federal Power Act against the town of Concord, Massachusetts (Concord).

Edison alleges that Concord owes Edison $45,406.50, and that it is entitled to this amount under its filed rate schedule for service to Concord for unmetered energy.

Comment date: September 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Public Service Co.

[Docket No. ER89-467-000]

August 8, 1989.

Take notice that Iowa Public Service Company (IPS) on July 12, 1989, amended its filing for its Firm Capacity Sales agreement between IPS and Citizens Electric Corporation (CEC) whereby IPS will supply short-term power and associated energy. IPS has requested an effective date of June 1, 1989 for the initial rate, and accordingly seeks waiver of the notice requirements of the Commission's rules.

IPS states that copies of this filing were served on CEC and the Iowa Utilities Board.

Comment date: August 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Iowa Public Service Co.

[Docket No. ER89-593-000]

August 9, 1989.

Take notice that Iowa Public Service Company (IPS) on August 7, 1989, tendered for filing an executed Firm Power Purchase Agreement, dated September 18, 1987, and accompanying Letter Agreement, dated July 17, 1989, whereby IPS will sell to MJMEUC firm electric capacity and associated energy subject to wheeling and/or other agreements between the MJMEUC member city and the intermediary utilities providing transmission service. The amount of firm electric capacity and associated energy will be in accord with the individual member cities capacity requirements schedules attached to the Agreement as Exhibit II.

Copies of the filing have been served on the Missouri Joint Municipal Electric Utility Commission, the Iowa Utilities Board and the City of Marceline.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Co.

[Docket No. ER89-594-000]

August 9, 1989.

Take notice that on August 7, 1989, Commonwealth Edison Company (Edison) tendered for filing Amendment No. 6, dated August 1, 1989, to Interconnection Agreement, dated March 1, 1975, between Edison and Wisconsin Power and Light Company (Wisconsin Power). Amendment No. 6 changes various rates for coordination energy transactions between the parties.

Edison and Wisconsin Power requested expedited consideration of the filing and an effective date for each rate schedule to be August 1, 1989. Accordingly, Edison and Wisconsin Power request waiver of the Commission's notice requirements to the extent necessary.

Copies of the filing were served upon the Illinois Commerce Commission, the Public Service Commission of Wisconsin and Wisconsin Power.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Co.

[Docket No. ER89-386-000]

August 9, 1989.

Take notice that on August 7, 1989, Kansas City Power & Light Company (KCPL) tendered an amendment to its earlier filing in this Docket.

KCPL states that the purpose of the Amendment is to provide, at the request of Commission Staff, responses to a series of questions regarding the filing.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Hampshire

[Docket No. ER89-591-000]

August 9, 1989.

Take notice that on August 4, 1989, Public Service Company of New Hampshire (PSNH) tendered for filing six copies of an executed amendment to its FERC Electric Rate Schedule No. 107 for transmission service power

purchased by Boston Edison Company (BECO) from the New Brunswick Electric Commission over the transmission facilities of PSNH.

The proposed executed amendment to FERC Electric Rate Schedule No. 107 changes that rate schedule in those respects. Article I, which specifies the term of the agreement, has been amended to extend the agreement through October 31, 1991, unless terminated earlier at BECO's option. IF BECO is unable to get a commitment for transmission service across the transmission systems of Central Maine Power Company and Maine Electric Power Company for the period November 1, 1990 through October 31, 1991, then BECO may terminate the agreement on October 31, 1990, provided that BECO gives written notice to PSNH no latter than April 1, 1990.

Article III which specifies the rates for the service, has been amended to replace the words "applicable PTF rate" with a reference to PSNH's FERC Electric Tariff Original Volume No. 1 (Non Firm Transmission Service) as that tariff may be amended from time to time. All other references to "PTF system(s)" in other sections of the Contract have been deleted and replaced with the words "transmission system(s).

Finally, the discount provided for in Article Ii of the original contract has been replaced with a variable discount schedule. PSNH will provide service at a 75% discount from the rate established under the Non-Firm Tariff for the period May 2, 1989 through October 31, 1989; at a 50% discount from that rate from the period November 1, 1989 through October 31, 1990; and at a 33% discount from that rate for the period November 1, 1990 through October 31, 1991.

PSNH requests that the amendment to FERC Electric Rate Schedule No. 107 be made effective May 2, 1989 and requests waiver of the Commission's notice requirements in order to allow the proposed effective date. As good cause for such waiver, PSNH submits that no party would be prejudiced by the grant of such waiver and that PSNH and BECO reached agreement after the proposed effective date had passed.

PSNH states that it has served copies of the filing on BECO and the Massachusetts Department of Public Utilities.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Co.

[Docket No. EL89-44-000]

August 9, 1989.

Take notice that on August 7, 1989, Cajun Electric Power Cooperative (Cajun) tendered for filing a complaint against Gulf States Utilities Company (Gulf States). Cajun states that this filing is made pursuant to sections 205, 206 and 306 of the Federal Power Act, 16 U.S.C. 824d, 824c and 825e, and pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.206.

Cajun states that Gulf States has refused to provide transmission service and delivery points necessary to enable Cajun member Jefferson Davis Electric Cooperative, Inc. (Jefferson Davis) to make Westlake Polymers Corporation and NL Chemicals, two industries which have requested electric service from Jefferson Davis. Cajun further states that Gulf States must provide such service pursuant to Service Schedule CSTS, a rate schedule filed with and approved by the Commission, but that Gulf States has refused to acknowledge the applicability of Service Schedule CSTS to the requested service.

Cajun is requesting the Commission to order Gulf States to accommodate the requested service pursuant to Service Schedule CSTS by either (1) establishing a new delivery point pursuant to Service Schedule CSTS or (2) agreeing to a reasonable location for new delivery points to be constructed by Cajun.

According to Gulf States a copy of this complaint is being served contemporaneously upon Gulf States.

Comment date: September 8, 1989, in accordance with Standard Paragraph end of this notice.

15. PMEP, Inc.

[Docket No. QF89-267-000]

August 9, 1989.

On July 28, 1989, PMEP, Inc. (Applicant), of Prudential Center, Boston, MA 02199, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Los Angeles, California. The facility will consist of two combustion turbine generators, two heat recovery steam generators with supplementary firing and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be utilized for space heating and cooling on the UCLA campus. The maximum net electric power production capacity of the facility will be 39,950 kW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in April 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Co.

[Docket No. ER89-592-000]

August 9, 1989.

Take notice that on August 7, 1989, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on July 5, 1989, by the respective parties:

Edison-Turlock Economy Energy Agreement

Between

Southern California Edison Company
and
Turlock Irrigation District

The filed Agreement establishes the terms and conditions under which Economy Energy may be purchased or sold by either Party.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Idaho Power Co.

[Docket No. ER89-528-000]

August 9, 1989.

Take notice that on August 7, 1989, Idaho Power Company tendered for filing an amendment to its earlier filing of a proposed tariff entitled, Short Term Capacity and/or Energy for Resale. In the amended filing Idaho Power Company submits a Notice of Cancellation of all Service Agreements currently effective under the Company's existing non-firm energy tariff, 1st Revised FERC Electric Tariff Volume No. 1. The proposed tariff would supersede Idaho Power Company's existing tariff applicable to firm and nonfirm-transactions of short duration.

The amendment delays the effective date for the proposed tariff to October 8, 1989 and modifies the energy charge component of the tariff rates.

Idaho Power Company states that copies of the amended filing were mailed to those utilities believed by Idaho Power Company to be interested in purchasing this type of service, as well as the utility regulatory

commissions for Idaho, Oregon, Nevada, California, Montana, Utah, New Mexico, Washington and Colorado.

Comment date: August 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the apropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 89-19260 Filed 8-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-217-000]

El Paso Natural Gas Co.; Tariff Filing

August 10, 1989

Take notice that on August 3, 1989, El Paso Natural Gas Company ("El Paso") filed, pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1

El Paso states that the tendered tariff sheets, when accepted by the Commission and permitted to become effective, serve to clarify El Paso's right to selectively adjust (discount) its Order No. 500 Throughput Surcharge for interruptible sales service.

El Paso also states that by order issued June 23, 1989 at Docket No. RP89-180-000, the Commission accepted for filing, effective June 1, 1989, certain tariff sheets permitting the selective adjustment of the Throughput Surcharge applicable to transportation service performed under part 284 of the Commission's Regulations on El Paso's interstate pipeline system. On page 6 of said order, the Commission, in response to the argument raised by certain parties that the discount should apply to all sales as well as transportation customers, clearly stated that individually certificated sales are not permitted to receive discounts. However, the Commission also clearly stated that it also permits discounts for sales under a blanket interruptible sales certificate which El Paso currently has in place. El Paso states that it agrees with the Commission that it can discount under its blanket sales certificate but is concerned that its ability to selectively adjust the Throughput Surcharge for interruptible sales may not be clearly stated in its tariff. In this regard, El Paso notes that the surcharge is presently displayed separately from (and, thus, by possible implication, as being additive to) the minimum rate. Therefore, to make clear that the surcharge component of the interruptible sales service rates can be selectively adjusted, El Paso has tendered its statement of Rates tariff sheet for Rate Schedule IS-1 which reflects a Maximum Rate of $.1291 per dth and a Minimum Rate of $.0000 per dth for the Throughput Surcharge. El Paso also tendered a revision to subparagraph 21.3(b) of section 21, Take-or-Pay Buyout and Buydown Cost Recovery, of the General Terms and Conditions contained in its First Revised Volume No. 1 Tariff so as clearly to provide for selectively adjusting the Throughput Surcharge for interruptible sales customers as well as shippers.

El Paso further states that as indicated in its May 26, 1989 filing and as set forth in section 21 of El Paso's Volume No. 1 Tariff, the Throughput Surcharge is designed to recover a portion of the fixed costs which El Paso has paid to producers/suppliers in settlement of take-or-pay claims. In the event that El Paso adjusts the surcharge to any level which is less than the Maximum Rate, the shortfall becomes non-recoupable and will not be made up from other customers or shippers utilizing El Paso's interstate pipeline system.

El Paso requested pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of § 154.22 of said Regulations be granted so as to permit the tendered tariff sheets to become effective August 1, 1989.

Copies of this filing were served upon all interstate pipeline system sales customers and shippers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 89-19261 Filed 8-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-46-003]

Kentucky West Virginia Gas Co.; Compliance Filing

August 10, 1989.

Take notice that on August 7, 1989, Kentucky West Virginia Gas Company (Kentucky West) filed Second Substitute Fourteenth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective August 1, 1989.

Kentucky West states that this filing is in compliance with the Commission's Letter Order issued June 21, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before August 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-19262 Filed 8-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-27-000]

North Penn Gas Co.; Notice of Proposed Changes In FERC Gas Tariff

August 1, 1989.

Take notice that North Penn Gas Company (North Penn) on August 4, 1989, tendered for filing Ninety-fourth

Revised Sheet No. PGA–1 to its FERC Gas Tariff First Revised Volume No. 1.

The revised tariff sheet is being filed pursuant to section 14 (PGA Clause) of the General Terms and Conditions of North Penn's FERC Gas Tariff to reflect changes in the cost of gas for the period September 1, 1989 through November 30, 1989 and is proposed to be effective September 1, 1989. The proposed change reflects an increase in the average cost of gas for the G–1 Rate Schedule of 9.782¢ per Mcf.

North Penn request waiver of the Commission's Rules and regulations pertaining to the thirty-day notice requirements.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective September 1, 1989, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective September 1, 1989 as proposed.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the service list attach to the filing.

Any person desiring to the heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211, 385.214). All such motions or protests should be filed on or before August 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1926 Filed 8–16–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–259–018]

Northern Natural Gas Company (Division of Enron Corp.); Proposed Changes in FERC Gas Tariff

August 10, 1989.

Take notice that on August 4, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing in its FERC Gas Tariff Third Revised Volume No. 1, the following tariff sheets:

Sixth Revised Sheet No. 4d
Eighty-Sixth Revised Sheet No. 4e

The listed tariff sheets are being filed in compliance with the Commission's July 20, 1989 Order Granting Rehearing issued in Docket No. RP88–259–009 which directed Northern to file tariff sheets listing the D–2 billing determinants for each of its customers.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before August 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19264 Filed 8–16–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–191–002]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

August 10, 1989.

Take notice that on August 7, 1989, Northwest Pipeline Corporation ("Northwest") submitted for filing Eighteenth Revised Sheet No. 201, to be a part of its FERC Gas Tariff, Original Volume No. 1–A.

Northwest states that this sheet is amended to include the ACA and GRI Surcharges in the currently effective minimum and maximum tariff rates, pursuant to the directives in the Commission's order dated July 6, 1989 in the above docket number.

A copy of this filing is being served to all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19265 Filed 8–16–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–256–004]

West Texas Gas, Inc.; Notice of Filing

August 10, 1989.

Take notice that on August 3, 1989, West Texas Gas, Inc. (WTG) filed Substitute Fourteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1989, and Substitute Fifteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, to be effective July 1, 1989. These tariff sheets were filed by WTG in compliance with the Commission's letter order issued July 7, 1989, in this docket.

Copy of this filing were served upon WTG's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214 (1978)). All such protests should be filed on or before August 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–19266 Filed 8–16–89; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 11, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0288
Title: Section 78.33, Special temporary authority (cable television relay stations)
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 40 responses; 160 hours; 4 hours average burden per response
Needs and Uses: Section 78.33 permits Cable Television Relay Service stations to file informal requests for special temporary authority to install and operate new equipment or operate licensed equipment in a manner different from that authorized in station licenses. Data is used by the Commission staff to ensure that grant would not cause interference to established stations.

OMB Number: 3060–0287
Title: Section 78.69, (Cable Relay) Station records
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 2,057 recordkeepers; 53,482 hours; 26 hours average burden per recordkeeper
Needs and Uses: Section 78.69 requires each licensee of cable television relay stations to maintain records of certain inspections, observations, and repairs. Used by Commission staff in field investigations to ensure proper operation of station.

OMB Number: 3060–0169
Title: Sections 43.51 and 43.53—Reports and records of communications common carriers and certain affiliates
Action: Revision
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 374 responses; 6,029 hours; 16.12 hours average burden per response
Needs and Uses: Sections 43.51 and 43.53 require common carriers to submit reports so that the FCC can monitor various activities of these carriers to determine the impact on the just and reasonable rates required by the Communications Act of 1934, as amended.

OMB Number: 3060–0166
Title: Part 42—Preservation of records of communication common carriers
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 68 recordkeepers; 136 hours; 2 hours average burden per recordkeeper
Needs and Uses: Part 42 prescribes the regulations governing the preservation of records of communications common carriers that are fully subject to the jurisdiction of the FCC. The requirements are necessary to ensure the availability of carrier records needed by Commission staff for regulatory purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–19307 Filed 8–16–89; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1790]

Petitions for Reconsideration and Stay of Actions in Rule Making Proceedings

August 11, 1989.

Petitions for reconsideration and stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions must be filed September 5, 1989. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Revision of part 15 of the Rules Regarding the Operation of Radio Frequency Devices with and Individual License. (Gen Docket No. 87–389, RM's 5193, 5250 and 5575).

Number of Petitions Received: 1.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Waterbury and Royalton, Vermont) (MM Docket No. 87–410, RM's 5802, 6202 and 6207.

Number of Petitions Received: 2.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Jupiter and White City, Florida) (MM Docket No. 88–366, RM's 6260 and 6531).

Number of Petitions Received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–19308 Filed 8–16–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[FHLBB No. 4561; AG–777]

The Waldoboro Bank, F.S.B.; Final Action Approval of Conversion Application

Date: August 8, 1989.

Notice is hereby given that on August 4, 1989, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Waldoboro Bank, F.S.B., Waldoboro, Maine, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Boston, One Financial Center, 20th Floor, Boston, Massachusetts 02110.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19278 Filed 8–16–89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Norwest Corp.; Proposal to Underwrite and Deal in Certain Securities to a Limited Extent, Conduct Private Placements as Agent of All Types of Securities and Engage in Other Securities Related Activities

Norwest Corporation, Minneapolis, Minnesota ("Norwest"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through its wholly owned subsidiary, Norwest Investment Services, Inc., Minneapolis, Minnesota ("Company"), in the activities of underwriting and dealing in, to a limited extent, commercial paper, municipal revenue bonds, mortgage-related securities, and consumer-receivable-related securities ("ineligible securities").

Norwest has applied to underwrite and deal in ineligible securities in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g.*, Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation, 73 Federal Reserve Bulletin 473 (1987); and Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation, and Security Pacific Corporation, 73 Federal Reserve Bulletin 731 (1987). Norwest is proposing to limit the gross revenues derived by Company from underwriting and dealing in bank-ineligible securities to no more than 5 percent of its total gross revenues as derived in any rolling 24 month period, measured every 3 months. Norwest is requesting, however, that the first measurement period be a six month period.

Norwest has also applied to: (1) Underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("bank-eligible securities") pursuant to § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)); (2) act as a futures commission merchant and provide investment advice on futures contracts and options pursuant to 12 CFR 225.25(b) (18) and (19); and (3) purchase and sell silver and gold bullion and coins for the account of customers within the limitations contained in United Virginia Bankshares, Inc., 73 Federal Reserve Bulletin 309 (1987). Company would conduct the proposed activities on a nationwide basis.

In addition, Norwest proposes to provide investment advisory and brokerage services on a combined basis subject to all of the conditions of 12 CFR 225.25(b)(15), Bank of New England Corporation, 74 Federal Reserve Bulletin 700 (1988), and PNC Financial Corp, 75 Federal Reserve Bulletin 396 (1989), including brokering and recommending to institutional customers securities in which Company has a principal's position as permitted in Bankers Trust New York Corporation, 74 Federal Reserve Bulletin 695 (1988). Norwest is also seeking to provide other incidental services, including margin lending, maintenance lending, maintenance of customers securities accounts, securities lending and sweep arrangements.

Norwest is also applying to engage in certain activities that it maintains are incidental to the underwriting and dealing activities that it is seeking approval for. Norwest states that Company would act as principal or agent with respect to bank eligible securities and may act as agent with regard to bank ineligible securities.

Norwest is proposing that Company will provide investment advice to issuers, generally regarding timing, rates and maturities of specific issues, as well as providing advice regarding general market conditions. Norwest maintains that these activities are a necessary and ordinary part of the business of acting as underwriter or dealer in securities in accordance with the Board's Order in Manufacturers Hanover Corporation, 70 Federal Reserve Bulletin 661 (1984). Norwest is also proposing that Company will provide financial advice to issuers of municipal securities.

Finally, Norwest anticipates that Company may enter into hedging transactions to enable it to hedge its risks, such as interest rate risk incurred by Company in the course of underwriting and dealing in bank-eligible and bank-ineligible securities. Norwest contends that such hedging transactions are a necessary incident to the proposed underwriting and dealing activities because they: (1) Reduce the risk to Company in its underwriting and dealing activities; (2) enable Company to compete effectively in obtaining mandates from issuers; and (3) enable Company to distribute and sell securities successfully. Norwest is also proposing that Company will engage in transactions such as options, caps, floors, swaps, futures and forward contracts in bank-eligible securities for its own account in accordance with the Board's policy statement set out at 12 CFR 225.142.

Norwest also seeks independent approval to privately place the following types of securities as a separate activity from Company's underwriting and dealing in ineligible securities: commercial paper, municipal revenue bonds, municipal leases, and securitized assets of the type that Norwest is seeking authority to underwrite. The Board has previously authorized a bank holding company subsidiary to privately place third-party commercial paper as agent subject to certain limitations. Bank of Montreal, 74 Federal Reserve Bulletin 500 (1988). Norwest has proposed to engage in the placement activity subject to the same limitations relating to: restrictions on credit extensions by lending affiliates of Company, transactions involving securities (placed) by Company, restrictions on other inter-affiliate transactions, management interlocks, and disclosure to customers of affiliate relationships and activities as would apply to Company's underwriting and dealing activities. Norwest has also otherwise committed to conduct these activities within the same limitations approved by the Board in Bank of Montreal, except that Norwest proposes that Company place commercial paper in minimum denominations of $100,000.

Norwest has also applied to engage through Company in leasing personal or real property or acting as agent, broker, or adviser in leasing such property pursuant to 12 CFR 225.25(b)(5), in connection with Company's proposed private placement of municipal leases.

The Board has not previously determined that the proposed combination of activities is permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking as to be a proper incident thereto." Norwest maintains that the proposed placement activities are closely related to banking because banks are currently active participants in the private placement market.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Norwest

contends that permitting bank holding companies to engage in the proposed activities would result in increased competition, gains in efficiency, and increased competition. Norwest believes that Company, through its limited underwriting, retail brokerage and private placement activities will be able to more effectively compete with investment bankers. Norwest states that the public will benefit from this increased competition and convenience of a firm providing many of the investment banking services needed by middle market and smaller businesses.

Norwest further contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 107 S.Ct 3228 (1987).

Any request for a hearing on this application must comply with 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Minneapolis.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 8, 1989.

Board of Governors of the Federal Reserve System, August 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-19301 Filed 8-16-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89E-0224]

Determination of Regulatory Review Period for Purposes of Patent Extension; Suprax®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SUPRAX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SUPRAX® (cefixime) which is indicated in the treatment of the following infections when caused by susceptible strains of the designated microorganisms: uncomplicated urinary tract infections caused by *Escherichia coli, Proteus mirabilis;* otitis media caused by *Haemophilus influenzae* (beta-lactamase positive and negative strains); *Moraxella (Branhamella) catarrhalis* and *Streptococcus pyogenes* [1]; pharyngitis and tonsillitis, caused by *Streptococcus pyogenes;* acute bronchitis and acute exacerbations of chronic bronchitis, caused by *Streptococcus pneumoniae* and *Haemophilus influenzae* (beta-lactamase positive and negative strains).

Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SUPRAX® (U.S. Patent No. 4,409,214) from the American Cyanamid Co. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated July 25, 1989, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, cefixime, represented the first permitted commercial marketing or use either alone or in combination with other active ingredients. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SUPRAX® is 2,068 days. Of this time, 1,031 days occurred during the testing phase of the regulatory review period, while 1,037 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: September 1, 1983. The applicant claims the investigational new drug (IND) application for SUPRAX® became effective August 18, 1983. However, FDA records indicate that the IND became effective September 1, 1983.

2. The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act: June 27, 1986. The applicant claims that the new drug applications (NDA's) SUPRAX® (NCA 50-621 and NDA 50-622) were initially submitted June 25, 1986. However, FDA records indicate that the applications were not received until June 27, 1986.

3. The date the application was approved: April 28, 1989. FDA has verified the applicant's claim that both NDA 50-621 and NDA 50-622 were approved April 28, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and

[1] Efficacy for this organism in this organ system was studied in fewer than 10 infections.

Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 16, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 5, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 9, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89-19306 Filed 8-16-89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. September 21 and 22, 1989, 9 a.m., Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, September 21, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to conclusion; open public hearing, September 22, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to conclusion; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the contact person.

Open committee discussion. On September 21, 1989, the committee will discuss XANAX" (Alprazolam), new drug application (NDA) 18–276, The Upjohn Co., for use in the treatment of panic disorder. On September 22, 1989, the committee will discuss clinical data relevant to the labeling of the hypnotic agent HALCION™ (NDA 17–892), The Upjohn Co.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committee.

Dated: August 11, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-19304 Filed 8-16-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement, Proposed Funding Priorities, Preferences, Definition of Community-Based Program, and Grant Orientation Conferences for the Health Careers Opportunity Program

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Health Careers Opportunity Program (HCOP) grants are now being accepted under the authority of section 787 of the Public Health Service Act, as amended by Public Law 100-607, and invites comments on the proposed funding priorities, preferences and definition of community-based program stated below.

Section 787 authorizes the Secretary to make grants to and enter into contracts with schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools. The assistance authorized by the section includes: recruitment, preliminary education, facilitating entry and retention in health and allied health professions schools, counseling and advice on financial aid.

The Administration's FY 1990 budget request for this program is $21,518,000. This amount could support an estimated 90 competitive awards at an average of $140,000, in addition to the continuation of multi-year projects approved in prior years. There is, however, no assurance of HCOP funding for FY 1990 at the level of the budget request or any other level. Applicants should be advised that this application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

The statute requires that of the amounts appropriated for any fiscal year, 20 percent shall be obligated for stipends to disadvantaged individuals of exceptional financial need who are students at schools of medicine, osteopathic medicine, or dentistry, 10 percent must be obligated to community-based programs and 70 percent must be obligated for grants or contracts to institutions of higher education. Not more than 5 percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers. The legislation specifies that priority for funding will be given to health and allied professions schools that, during a period of three years commencing on the date of award of the grant, increase their first year enrollment of individuals from disadvantaged backgrounds by at least 20 percent by the end of such 3 year period and subsequent to the 3 year period attain such an increase over enrollments in the base year 1987.

To receive support, applicants must meet the requirements of the program regulations specified in 42 CFR part 57, subpart S.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D18), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed applications should be returned to the Grants Management Officer at the above address.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. the OMB clearance number is 0915-0060.

The application deadline date is November 3, 1989. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications recieved after the deadline will be returned to the applicant. This program is listed at 13.822 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The degree to which the proposed project adequately provides for the requirements in the program regulations;

(b) The number and types of individuals who can be expected to benefit from the project;

(c) The administrative and management ability of the applicant to carry out the proposed project in a cost effective manner;

(d) The adequacy of the staff and faculty;

(e) The soundness of the budget; and

(f) The potential of the project to continue without further support under this program.

In addition, the following mechanisms may be applied in determining the funding of applications.

1. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

2. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

The following funding priorities and preferences are proposed to govern the distribution of grant awards to approved HCOP grant applicants for Fiscal Year 1990.

Proposed Funding Priorities for Fiscal Year 1990

1. A funding priority will be given to HCOP applications from health professions schools and from allied health training centers for baccalaureate or higher level programs in physical therapy, physician assistant, respiratory therapy, medical technology and/or occupational therapy that have a disadvantaged student enrollment of 35 percent or more; or can document (over the past 3-year period) a 10 percent increase in the number of first-year enrollees who are disadvantaged; or can document a 90 percent retention rate of disadvantaged students of the most recent graduating class.

2. A funding priority will be given to applicant educational institutions that can document that at least 60 percent of the disadvantaged prehealth professions students from their school, who applied over the past 3 years to a health or allied health professions school, were enrolled in such schools.

Proposed Funding Preferences for Fiscal Year 1990

A. A health professions school may request consideration for a funding preference if—

1. Either the applicant health professions school or an undergraduate school with which it has a formal arrangement:

a. Identifies and selects a cohort of seven or more disadvantaged students that have completed an undergraduate prehealth professions program and applied but were not accepted into a health professions school, or made a late decision to enter a new health professions school, for participation in the program; and

b. Provides the selected student cohort with one calendar year (including the initial 6 to 8 week summer program) of rigorous postbaccalaureate (undergraduate and/or professional) level science and other appropriate educational experiences to prepare the students for entry into the applicant health professions school; and

2. The applicant health professions school:

a. Accepts for enrollment in the first year of their health professions school class, upon entry into the post-baccalaureate program, members of the cohort who successfully complete the program; or assures enrollment, at the election of the student, at another health professions school; and

b. Provides members of the cohort and other disadvantaged enrollees retention services including a 6 to 8 week prematriculation summer program to ease their transition into the health professions school curriculum.

Stipends would be available through the grant for the targeted students during their summer programs and undergraduate academic year participation.

B. An allied health training center may request consideration for a funding preference if—

1. Either the applicant allied health training center or an undergraduate school offering pre-allied health preparation with which the center has a formal arrangement:

a. Identifies and selects a cohort of five or more disadvantaged students for participation in the program who have completed an undergraduate degree with a significant science focus and made a late decision to enter an allied health professions school and are in pursuit of a baccalaureate level degree in physical therapy, physician assistant, respiratory therapy, medical technology or occupational therapy; and

b. Provides the selected student cohort with one calendar year (including an initial 6 to 8 week summer program) of rigorous science and other educational experiences (e.g., allied health basic science, and quantitative and reading skills), to prepare them for entry at the end of that year into one of the above named baccalaureate level training programs of the applicant allied health training center; and

2. The applicant allied health training center:

a. Accepts for enrollment in the first-year class of one of the specified baccalaureate level training programs of the applicant allied health training center, upon entry into the preprofessional phase, members of the cohort who complete the program; or assures enrollment, at the election of the student, at another health professions school; and

b. Provides members of the cohort and other disadvantaged enrollees with retention services including a 6 to 8 week prematriculation summer program to ease the transition into the specified allied health professions school curriculum.

The funding priorities and preferences do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect to request consideration under the priorities and/or preferences are encouraged to submit applications.

The applicant must indicate on the upper right-hand corner of the face page of the application the funding priority and/or preference in which the applicant wishes consideration. However, the final determination of the category of funding priority and preference will be based on a staff assessment of the contents of the proposal. An applicant may apply for consideration under only one funding priority and one preference.

It is proposed to define "community-based" programs as follows:

"Community-based program" means a program whose organizational headquarters is located in and which primarily serves: a Metropolitan Statistical Area, as designated by the Office of Management and Budget; a Bureau of Economic Analysis, U.S. Department of Commerce designated non-metropolitan economic area or a county; or Indian tribe(s) as defined in 43 CFR 36.102(c), i.e., an Indian tribe, band, nation, rancheria, Pueblo, colony or community, including an Alaska Native Village or regional or village corporation.

Interested persons are invited to comment on the proposed funding priorities, preferences, and definition of community-based program. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before September 18, 1989 will be considered before the final funding priorities, preferences and final definition of community-based programs are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities and preferences will be applied.

Written comments should be addressed to: Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Definitions

As used in this notice:

"Health Professions Schools" means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, chiropractic, or graduate programs in clinical psychology and health administration, as defined in section 701(4) of the Public Health Service Act.

"Individual from a disadvantaged background" means an individual who (a) comes from an environment that has inhibited the individual from obtaining knowledge, skills and abilities required to enroll in and graduate from a health professions school or from a program providing education or training in an allied health profession or (b) comes from a family with an annual income below a level based on low income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low income family for purposes of these Health Careers Opportunity Program grants for fiscal year 1990:

Size of parents' family [1]	Income level [2]
1	$7,900
2	10,300
3	12,300
4	15,700
5	18,500
6 or more	20,800

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1988, rounded to $100.

"Training Center for Allied Health Professions" means a junior college, or college, or university, as defined in section 795 of the Public Health Service Act, which:

a. Provides educational programs leading to an associate, baccalaureate, or higher degree needed to practice as one of the following:

Doctoral Degree:
Clinical Psychologist
Master's Degree:
Speech Pathologist/Audiologist
Nutritionist
Biostatistician
Bachelor's Degree:
Biomedical Engineer
Blood Bank Technologist
Community Health Educator
Corrective Therapist
Cytogenetic Counselor
Dental Hygienist
Dietitian (Coordinated undergraduate program)
Health Physicist
Health Services Administrator
Medical Illustrator
Medical Records Administrator
Medical Technologist
Microbiology Technologist
Occupational Therapist
Physical Therapist
Primary Care Physician Assistant
Recreational Therapist
Rehabilitation Counselor
Sanitarian (Environmental Health)
Associate Degree:
Clinical Dietetic Technician
Cytotechnologist
Dental Assistant
Dental Hygienist
Dental Laboratory Technician
EKG/EEG Technologist
Medical Assistant
Medical Laboratory Technician
Medical Records Technician
Occupational Therapy Assistant
Ophthalmic Medical Assistant
Ophthalmic Technologist
Optometric Technician
Orthopedic Technologist
Physical Therapy Assistant
Radiologic Technologist
Respiratory Therapist
Sanitarian Technician
Surgical Technologist

b. Provides training for no fewer than 20 persons in the substantive health portion, including clinical experience as required for employment, in three or more of the disciplines listed in paragraph (a) of this definition and has a minimum of six full-time students in that portion of each curriculum by October 15 of the fiscal year of application.

c. Has a teaching hospital as part of the grantee institution or is affiliated with a teaching hospital by means of a formal written agreement. The term "teaching hospital" includes other settings which provide clinical or other health services if they fulfill the requirement for clinical experience specified in an allied health curriculum.

Grant Orientation Conferences

Grant applications and program information for the Health Careers Opportunity Program also will be provided through four program technical assistance conferences. The conferences scheduled during September 1989 are for the benefit of potential applicants and current grantees.

The four conferences will be held as follows:

September 11–12, 1989

Philadelphia, Pennsylvania.
Thomas Jefferson University, College of Allied Health Sciences, Jefferson Alumni Hall, Locust and 11th Street, Philadelphia, Pennsylvania 19107, Telephone: (215) 928–6873 (Holiday Inn—1305 Walnut Street Philadelphia, Pennsylvania 19107 Telephone: (215) 735–9300

September 14–15

Atlanta, Georgia
The Westin Peachtree Plaza Hotel, Peachtree at International Blvd., Atlanta, Georgia 30343, Telephone: (404) 659–1400, (800) 228–3000

September 18–19, 1989

Chicago, Illinois
McCormick Center Hotel, Lake Shore Drive at 23rd Street, Chicago, Illinois 60616, Telephone: (312) 791–1900, (800) 621–6909

September 21–22, 1989

San Francisco, California
John Burton Federal Building, 450 Golden Gate Avenue, Room 2007, San Francisco, California 94102, Telephone: (415) 556–7539.

Expenses incurred by the attendees will not be supported by the Federal Government.

Agenda items will include: New retention program and revised HCOP legislative requirements; application preparation (competitive and continuation); and grants management information. Significant focus of the conferences will be directed toward: future implications of the new legislation; funding priorities for applicants demonstrating increased enrollment and retention of disadvantaged students; and funding preferences designed to increase the numbers of disadvantaged students into health professions and allied health professions schools.

Participation in the technical assistance meetings does not insure approval and funding of prospective applications.

To obtain specific information regarding the conferences and programmatic aspects of this grant program, direct inquiries to: Mr. Darl W. Stephens, Chief, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, Room 8A–08, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4493.

Dated: July 7, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–19303 Filed 8–16–89; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Agency Information Collection Under the Office of Management and Budget Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an information collection approval for the National Child Care Survey, 1989.

ADDRESS: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: National Child Care Survey, 1989
OMB No.: N/A
Description: The National Child Care, 1989 Survey will provide national estimates of the use of child care and preschool programs by households with children under 13. Information obtained from center-based programs and home-based providers will describe the supply of child care and early education programs
Annual Number of Respondents: 29,794
Annual Frequency: 1
Average Burden Hours Per Response: 0.13
Total Burden Hours: 3,951

Dated: August 10, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 89-19270 Filed 8-16-89; 8:45 am]
BILLING CODE 4130-01-M

Public Health service

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593).

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2) requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from June 13 through July 8, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. John & Pamela Miller on behalf of Ashley Miller, Omaha, Nebraska, Claims Court Docket No. 89-75 V
2. Kay Outlaw on behalf of William Clinton Outlaw, Macon, Georgia, Claims Court Docket No. 89-76 V
3. Jeff & Mary Batdorf on behalf of Kyle Grey Batdorf, Nashville, Tennessee, Claims Court Docket No. 89-77 V
4. Wayne & Karen Kime on behalf of Jason Kime, Bravdon, Florida, Claims Court Docket No. 89-78 V
5. Crystal & Joseph Deitz on behalf of Jonathan Deitz, Lewesburg, West Virginia, Claims Court Docket No. 89-79 V
6. Susan Carter, Springfield, Utah, Claims Court Docket No. 89-80 V
7. Carol Singh, Swathmore, Pennsylvania, Claims Court Docket No. 89-81 V
8. Barbara Borchardt, Marathon County, Wisconsin, Claims Court Docket No. 89-82 V
9. J. Marie Loe on behalf of Nathan Loe, Albany, Oregon, Claims Court Docket No. 89-83 V
10. Jonathan & Donna Wilson on behalf of Gregory Wilson, Rockingham County, New Hampshire, Claims Court Docket No. 89-84 V
11. Leonard Fleischer, West Medford, Massachusetts, Claims Court Docket No. 89-86 V
12. Warren & Sheila Stidham on behalf of Warren E. Stidham, Davenport, Iowa, Claims Court Docket No. 89-87 V.

Dated: August 11, 1989.

John H. Kelso.

Acting Administrator.

[FR Doc. 89-19258 Filed 8-16-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Approval for Inclusion in the National Wild and Scenic Rivers System as a State Administered Component

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

Pursuant to the authority granted the Secretary of the Interior by Section 2 of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1273), and upon proper application of the Governor of the State of Illinois, the Middle Fork of the Vermilion River is designated as a State-administered component of the National Wild and Scenic Rivers System. This action is based on the designation of the river by the State of Illinois and the protection offered this river and its immediate environment by and pursuant to applicable State laws and regulations.

On August 20, 1987, the Governor of Illinois petitioned the Secretary of the Interior to add the Middle Fork of the Vermilion River to the National System. (See **Federal Register** of January 20, 1988, page 1525.) This river had been designated as a State Protected River on August 8, 1986. The Secretary on November 14, 1988, denied the State's application to include the river segment as a component of the National Wild and Scenic Rivers System under State administration.

In response to a request for reconsideration from the Governor of Illinois on February 15, 1989, the Secretary conducted a complete review of the State application and documents associated with the designation decision. As a result of that review, the Secretary has determined that a 17.1-mile segment of the Middle Fork of the Vermilion should be designated as a State-administered scenic river component of the National Wild and Scenic Rivers System, as provided for in section 2(a)(ii) of the Wild and Scenic Rivers Act.

The State of Illinois has fulfilled the requirements of the Act by designating this segment as a "State Protected River" and by adopting a program of action that will adequately protect the river from adverse State actions. The National Park Service evaluation of the river concluded that Middle Fork meets the criteria for a national scenic river. Accordingly, the river segment is classified as scenic pursuant to section 2(b) of the Act.

Middle Fork of the Vermilion River. The segment of the river from River Mile 29.8 at the Conrail Railroad crossing north of U.S. 150 to River Mile 46.9 north-northeast of Collison, all in Vermilion County.

This action is taken following substantial public involvement and consultation with the Departments of Agriculture, Army, and Transportation, the Federal Energy Regulatory Commission, and the U.S. Environmental Protection Agency as required by section 4(c) of the Wild and Scenic Rivers Act. A public meeting on the State's proposed river management plan and application for national designation of the river was held in Danville, Illinois, on February 26, 1987. In addition, a 45-day period for public comment on the State's application and river management plan and on the environmental assessment of the proposed national designation was provided from January 20 to March 5, 1988. All comments received have been carefully considered.

Notice is hereby given that effective upon this date, the above-described river segment is approved for inclusion in the National Wild and Scenic Rivers System as a scenic river area to be administered by the State of Illinois.

The primary author of this notice is Tom Gilbert, National Park Service, 1709 Jackson Street, Omaha, NE 68102, Phone 402/221-2481.

Dated: August 11, 1989.

Manuel Lujan Jr.,

Secretary of the Interior.

[FR Doc. 89-19302 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[CA-930-09-4310-13]

Afton Canyon Area of Critical Environmental Concern and the Adjacent Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the Afton Canyon Natural Area and the surrounding area, including vehicle route designation decisions and supplemental rules.

SUMMARY: The California Desert Conservation Area Plan identified the Afton Canyon Area of Critical Environmental Concern (ACEC) as an area with significant riparian, wildlife, and scenic values which require special management attention. The management plan prescribes actions for the protection and preservation of those resource values. The planning area includes 41,500 acres within T. 10 N., R. 5 E.-6 E; T. 11 N., R. 5 E.-7 E; T. 12 N., R. 6 E.-7 E, SBM. Authorities for the management plan are 43 CFR 8341, 8342, and 8360; Federal Land Policy and Management Act of 1976 (Sec. 202e); National Environmental Policy Act of 1969; and the California Desert Conservation Area Plan of 1980, as amended. Both written and oral public comments were evaluated in reaching these management decisions. An 82-day public comment period extended from October 1, 1988 to December 21, 1988. Two public meetings were held (in Barstow of November 1, 1988, and in Riverside on November 2, 1988) to solicit comments on the draft management plan. The draft management plan was then revised based on public comment and the final management plan was signed on June 8, 1989. The decision to implement the management plan was made on the basis of an Environmental Assessment (EA) which considered the environmental effects of the proposed action and alternatives. No significant adverse effects were found and a Finding of No Significant Impact (FONSI) was made. The EP and FONSI are available for public inspection at the Barstow BLM Office.

The Afton Canyon area will remain open to uses which are compatible with the protection and preservation of riparian, wildlife, and visual resources. The management plan prescribes the following actions: Amend the CDCA Plan to expand the Afton Canyon ACEC from 4,800 acres to 8,160 acres; consolidate land ownership by acquiring, through exchange, most private land within the 41,500 area acre; designate a basic vehicle access network of open routes and designate all other routes and washes as closed to vehicle use; reroute the Mojave Road for two and one-half miles to remove vehicle use from the prime riparian area; rehabilitate closed vehicle routes; allow camping only in designated campgrounds; prohibit recreational shooting except for legal hunting only with shotguns using non-solid projectiles in the expanded ACEC; increase on-the-ground management (law enforcement, educational, and visitor services activities); sign the area to provide visitor information regarding services, as well as activities which are allowed and prohibited; remove exotic plant species (tamarisk) and replant with

native vegetation; prohibit motor vehicle events involving the elements of competition; prohibit wood collection within the expanded ACEC; remove burros; and monitor the area to ensure plan actions are having the desired effect.

Maps showing which routes are open and closed to vehicle use are contained in the final management plan and are available from the address listed. The designation of these routes is made under the authority of 45 CFR 8342.2(b).

In order the fully implement selected recommendations in the final management plan, the following supplemental rules are promulgated to provide for the protection of persons, property, and public land resources in the Afton Canyon area:

The Afton Canyon ACEC is closed to recreational shooting (including but not limited to target shooting, plinking, and trap shooting); however, legal hunting (consistent with State laws) will be allowed with shotguns only using non-solid projectiles. No shooting or hunting is permitted within one-half mile of designated camping areas and the middle railroad trestle. Camping and campfires are allowed only in designated campgrounds in the Afton Canyon area. Equestrian camping is allowed only in the designated equestrian campground. Additional information regarding these supplemental rules is contained in the final management plan for the Afton Canyon area available from the BLM office listed below.

EFFECTIVE DATE: September 18, 1989.

ADDRESS: The management plan, including maps, environmental assessment, vehicle route designation records of decision and public comment analysis, are available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 from 7:45 a.m. until 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Harold Johnson or Paul McClain at the above address or telephone (619) 256–3591.

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8362.1–6. These rules have been recommended and adopted through the development of the Afton Canyon Management Plan. These rules will be available in the Barstow Resource Area office which has jurisdiction over the the lands, sites, and facilities affected. These rules will also be posted near and/or within the lands, sites, or facilities affected.

Appeals: If a party is adversely affected by this action, there is a right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR part 4, subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with the Board) so that the case file can be sent to the Board. A copy of the notice of appeal and of any statement of reasons, written arguments, or briefs must be served upon any adverse parties, and in addition, to the Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E–2753, Sacramento, CA 95825, within 15 days of the filing of any specific document. If the procedures set forth in the regulations are not followed, and appeal is subject to dismissal.

Dated: August 11, 1989.

Ed Hastey,

State Director.

[FR Doc. 89–19365 Filed 8–16–89; 8:45 am]

BILLING CODE 4310–40–M

[NV–060–09–4320–02]

Battle Mountain District Advisory Council Meeting in Austin, NV

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and 43 CFR part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Wednesday, September 13, 1989. The meeting will convene at 9:00 a.m. in Austin, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Continuation/update of District recreation program;
2. Information on the effects of grazing decisions on wild horses;
3. Update on fire program;
4. Briefing on District's proposed FY90 budget; and
5. Field trip to Steiner Creek, the District's demonstration riparian management area.

The meeting is open to the public. Interested persons may make oral statements between 9:30 and 10:00 a.m. on September 13, 1989. If you wish to make an oral statement, please contact James D. Currivan, District Manager, by 4:30 p.m., September 8, 1989.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain Nevada 89820 or phone (702) 635–5181.

Dated: August 7, 1989.

James D. Currivan,

District Manager, Battle Mountain, Nevada.

[FR Doc. 89–19324 Filed 8–16–89; 8:45 am]

BILLING CODE 4310–NC–M

[CO–050–4320–02]

Canon City District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 463), that a meeting of the Canon City District Grazing Advisory Board will be held at 9:30 a.m. Thursday, September 21, 1989, at the basement level of the Chaffee County Bank, 146 G Street, Salida, Colorado.

The purpose of this meeting will be:

1. Discussion of proposed Range Improvement projects.
2. Initiate, conduct and settle business pertaining to the expenditure of Range Betterment Funds.
3. Update Board on status of ongoing resource management planning efforts in the Canon City District.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. Any member of the public may file with the Board a written statement concerning matters to be discussed. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Donnie R. Sparks, District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (719) 275–0631.

Adrian Neislus,

Acting District Manager.

[FR Doc. 89–19325 Filed 8–16–89; 8:45 am]

BILLING CODE 4310–JB–M

[OR–010–09–4410–10:GP9–299]

Lakeview District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lakeview District Multiple Use Advisory Council will hold a meeting on Thursday, September 28, 1989. The meeting will begin at 9:00 a.m. at the Bly Fire Hall in Bly, Oregon. The public is invited to attend. The meeting is being held in order to elect a new Council president and to establish procedures for future meetings. In addition, members will be briefed on the status of the upper Klamath River Wild and Scenic River Study and the Warner

Lakes Plan Amendment for Wetlands and Associated Uplands.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs, Officer, 1000 So. Ninth St., Lakeview, OR 97630, (Telephone (503) 947–6110).

Judy Ellen Nelson,

District Manager, Lakeview.

[FR Doc. 89–19326 Filed 8–16–89; 8:45 am]

BILLING CODE 4310-33-M

[OR-020-09-4340-14: GP9-303]

Burns District Advisory Council Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, Burns District Advisory Council Meeting and Tour.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976, that a meeting and tour by the Burns District Advisory Council will be held on September 14 and 15, at the Burns District Office located on Highway 20, 3 miles west of Hines, Oregon. The meeting will begin at 9 a.m. on Thursday, September 14; the tour will leave the Burns District Office at 9 a.m. on Friday, September 15.

The agenda for the meeting will include: (1) An update on the Three Rivers Resource Management Plan (RMP); (2) a report on increased minerals activity in the Burns District; (3) a briefing on the District's Wildlife and Recreation programs; (4) a status report on the Proposed Steens Mountain Winter Sports program; (5) an update on the District's grazing management program; and (6) other miscellaneous items.

The tour will leave from the Burns District Office parking lot to tour areas within the Three Rivers Resource Area which reflect major resource issues identified in the Three Rivers RMP.

DATES: The meeting will begin at 9 a.m. and should adjourn by 5 p.m. Pacific Standard Time. The field tour will begin at 9 a.m. and conclude at the Burns District Office by 6 p.m.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Bureau of Land Management, Burns Distict Office, HC 74–12533, Highway 20 West, Hines, Oregon 97738. Phone (503) 573–5241.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Interested persons may make oral statements to the council at the end of the meeting or file written statements for the council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, HC 74–12533, Highway 20 West, Hines, Oregon 97738, by September 11, 1989.

The tour will be open to the general public. However, interested persons will need to provide their own transporation and meals. Road conditions will require 4-wheel drive vehicles with high clearance. Individuals wishing to attend the tour should contact the Burns District Office at the above address.

Dated: August 7, 1989.

Joshua L. Warburton,

Burns District Manager.

[FR Doc. 89–19366 Filed 8–16–89; 8:45 am]

BILLING CODE 4310-33-M

[MT-930-09-4212-20; NDM 78173]

Issuance of Disclaimer of Interest to Oil and Gas and/or Mineral Rights; North Dakota

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Application has been filed on behalf of the North Dakota State Land Department for a recordable Disclaimer of Interest by the United States.

DATE: Comments should be received by November 15, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION: The United States of America, under the provisions of Section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745 (1982), intends to disclaim interest in all minerals beneath the bed of the Missouri River, and the oil and gas rights beneath islands, each part of the following described land:

Fifth Principal Meridian, North Dakota

T. 152 N., R. 103 W.,
Sec. 20, S½.

The area affected is unsurveyed, but contains approximately 165 acres of islands and riverbed in McKenzie and Williams Counties.

1. The Bureau of Land management has reviewed the official public land records and related evidence, and has determined that the United States has no claim to the minerals listed in the land described. They found that the minerals under the riverbed belong to the State of North Dakota because the river was navigable at statehood, and that the oil and gas rights (under islands formed in the bed of the river after statehood) were not acquired by the Corps of Engineers in the August 11, 1953, Declaration of Taking, in the matter of the *United States of America vs. 1,309.50 Acres of Land, More or Less, Situated in McKenzie and Williams Counties, State of North Dakota, and Dolly Coyne, et al. and Unknown Owners*, in the United States District Court, in and for the Southwestern Division, District of North Dakota, Civil No. 2854. Issuance of a recordable disclaimer of interest will help remove a cloud on the title to the listed mineral interests.

2. for a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or obligations in connection with the proposed disclaimer, may present their reviews to the Chief, Branch of Lands, in the Montana State Office.

3. Absent objections, the recordable disclaimer will be issued no sooner than 90 days after the date of this publication.

Dated: August 8, 1989.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89–19322 Filed 8–16–89; 8:45 am]

BILLING CODE 4310-DN-M

[CA-940-09-3110-10-WSAA; CACA R 02979]

California; Opening Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Opening.

SUMMARY: Lands which were formerly patented for Recreation and Public Purposes have been returned to the Bureau of Land Management for non-use. The lands are now being opened to exchange.

FOR FURTHER INFORMATION CONTACT: Nancy J. Alex, Chief, Lands Section (916–978–4820).

Upon publication of this Opening Order in the Federal Register, the following lands will be open to exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976: SBM, T. 9 N., R. 2 W., Sec. 8, NE¼SW¼, containing 40 acres.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89–19364 Filed 8–16–89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-5410-10-ZBAQ; CACA 24449]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Segregation.

SUMMARY: The private lands described in this notice, aggregating 30.00 acres, are segregated and made unavailable for filings under the public land laws, including the mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, Room 2845, Sacramento, California 95825, (916) 978-4820.

Serial No.—CACA 24449

T. 13 N., R. 5 E., San Bernardino Meridian,
Sec. 34, W½ W½ NE¼ SW¼ W½ SE¼ SW¼. County—San Bernardio.

Minerals reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: August 10, 1989.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 89-19327 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-050-4212-21; COC-49782]

Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed leasing of public land in Saguache County, CO.

SUMMARY: A parcel of land is being considered for lease under section 302 of the Federal Land Policy and Management of 1976 (90 Stat. 2762; 43 U.S.C. 1732). Leasing of the land will authorize an area for supplies and materials necessary for the operation of a sawmill and will allow the government to collect fair market rental. The land and prospective lessee are as follows:

New Mexico Principal Meridian, Colorado

T. 44 N., R. 7 E.
Sec. 13: E½SE¼SE¼SW¼

The parcel of land contains about 5 acres located adjacent to the sawmill site. Prospective lessee: John Baxter. The parcel would be offered noncompetitively to the applicant under a 3-year renewable lease at no less than fair market rental. The general terms and conditions for leases are found in 43 CFR 2920.7. The lessee would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the lease, in accordance with 43 CFR 2920.6.

DATE: On or before September 18, 1989, interested parties may submit comments to the District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Bill Miller, San Luis Area Realty Specialist, at (719) 589-4975.

Adrian Neisius,

Acting District Manager.

[FR Doc. 89-19323 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-JB-M

[NM-010-09-4333-12-11/GP9-0120]

Albuquerque District, NM; Rules of Conduct and Supplemental Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rules to 43 CFR part 8365 for designated recreation sites, special management areas, and other Public Lands in the Albuquerque District.

SUMMARY: The purpose of these supplementary rules is to provide for the protection of persons, property, and public lands and resources. As a visitor to public lands, the user is asked to follow certain rules designed to protect the lands and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor recreation experience. More specifically the purposes fall into the following categories:

1. Implementation of Management Plans—Certain prohibited activities have been recommended as supplemental rules for designated recreation sites, specially designated management areas, and Public Lands in general. Some plan amendments and recommendations are not enforceable as published. In order to implement these recommendations, they must be published as specific prohibitied acts in the **Federal Register**. Use of the supplemental rules section of 43 CFR subpart 8365.1-6, is the most appropriate way of implementing these recommendations. Rationale for these recommendations are presented in their entirety in the final management plan for the specific area.

2. Mitigation of User Conflict—Certain other supplementary rules are recommended because of specific user conflict problems. Prohibiting the reservation of camping space in developed campgrounds will allow such space to be available on first come first serve basis. This will prevent a few persons from monopolizing the use of limited developed camping space. Motorized vehicle freeplay is recommended as a prohibited act to minimize the noise and nuisance factor that such activity represents in a developed recreation site.

3. Public Health and Safety—The erection and maintenance of temporary toilet stuctures on the public lands could represent a major threat to public safety and health due to the concentration of human wastes. The erection and maintenance of temporary toilets may be permitted by the authorized officer on a case by case basis and only when appropriate state and local permits have been obtained.

It should be noted that the shooting restrictions recommended do not prohibit legitimate hunting activities, and therefore do not conflict with the New Mexico Department of Game and Fish Regulations. Recreational shooters are encouraged to use public land where such shooting restrictions do not apply.

4. Complimentary Rules—Some supplementary rules are recommended to compliment those of other Federal, state and local agenices. Because these rules provide for the protection of persons and resources and in the interest and spirit of cooperation with the responsible agenices, these

supplementary rules are deemed necessary.

Definitions

1. A Special Management Area (SMA): A special management area is an area where special or more intensive types of recreation management are needed. There are two primary types of SMAs: those Congressionally designated and those administratively established by the BLM.

2. A designated developed recreation site: A designated recreation site is a smaller area or an enclave of a SMA where recreation is the principal management objective for which the Bureau manages and facilities are provided. Development within designated recreation sites may vary from limited development for protection of the resources values and the safety of users to a distinctly defined site in which definite developed facilities that meet the Land and Water Conservation Fund Act of 1965 as amended, critieria for a fee collection site and are provided for concentrated public use.

3. Public lands and related waters: Public lands are lands or interest in lands administered by the Bureau of Land Management. Related waters and waters which lie directly over or adjacent to public lands and require some management control to protect federally administered resources or to provide for enhanced visitor safety and other recreation experience.

4. Overnight camping: Occupying a developed camp site or specific location within campgrounds during the established night period of 10:00 p.m. to 6:00 a.m. will be considered overnight camping for fee collection and enforcement purposes unless otherwise authorized.

The following areas are desingated as developed recreation sites for the purpose of applying the rules of conduct contained in 43 CFR 8365.2:

1. Rio Grande Wild Rivers Recreation Area (Taos Resource Area). T. 29 N., R. 12 E., NMPM, Sec. 16, 17, 20, 29, 31, 32. T. 28 N., R. 12 E., NMPM, Sec. 4, 5, 6, 8, 9, 16, 17.

2. Santa Cruz Lake (Taos Resource Area). T. 20 N., R. 10 E., NMPM, Sec. 7, 18.

3. Rio Grande Lower Gorge River Access (Taos Resource Area). T. 23 N., R. 11 E., NMPM, Sec. 32.

4. Rio Grande County Line (Taos Resource Area). T. 23 N., R. 11 E., NMPM, Sec. 15.

5. John Dunn Bridge (Taos Resource Area). T. 27 N., R. 12 E., NMPM, Sec. 31.

6. Angel Peak (Farmington Resource Area). T. 26 N., R. 10 W., NMPM, Sec. 4, 5, 6. T. 27 N., R. 10 W., NMPM, Sec. 23, 26, 34, 35.

7. Simon Canyon (Farmington Resource Area). T. 30 N., R. 8 W., NMPM, Sec. 9, 10, 15.

In addition to the regulation contained in 43 CFR 8365.2 the following supplemental rules will be applied, unless otherwise authorized, to the recreation sites and areas listed above.

1. Reserving camping space is prohibited. Camping space will be allocated on a first come first served basis.

2. Camping or occupying between 10:00 p.m. and 6:00 a.m. is prohibited at the Rio Grande Lower George River Access, John Dunn Bridge and Rio Grande County Line recreation sites.

3. Camping or occupying between 10:00 p.m. and 6:00 a.m. is prohibited on the access road or in developed parking areas in the Simon Canyon Recreation site. Tent camping is permitted elsewhere within the recreation site.

4. Campfires are prohibited along the river in the Simon Canyon recreation site. Camp stoves and grills are permissible.

5. Motorized vehicle freeplay is prohibited within designated recreation sites.

6. Equestrian use is prohibited at campgrounds, picnic area, and other developed facilities.

7. No person may discharge a firearm or any other device capable of injuring a person or animal or causing damage to any property within 1 mile of designated recreation sites.

8. Within designated recreation sites, quiet hours are in effect from 10:00 p.m. to 6:00 a.m.

9. No more than 2 vehicles allowed per camp site at designated recreation sites.

10. Posting or distribution of any unauthorized signs, posters, printed material, or commerical advertisments is prohibited.

In addition to the regulations contained in 43 CFR 8365.1, the following supplemental rules will be applied, unless otherwise authorized, to these SMAs as identified:

1. On public land within El Malpais National Conservation Area (Rio Puerco Resource Area) the following rules apply:

a. On public lands in the vicinity of the La Ventana natural arch within T. 8 N., R. 10 W., Sec. 33 SE¼, Sec. 34 SW¼ and T. 7 N., R. 10 W., Sec. 3 NW¼, Sec. 4 NE¼.

1. The use of firearms is prohibited.

2. Campfires are prohibited.

3. Camping is prohibited.

2. On all public lands within the Tent Rocks Area of Critical Environmental Concern (Rio Puerco Resources Area) the following rules apply:

a. Firewood collection is prohibited.

b. The use of firearms is prohibited.

c. Climbing on tent rock formations is prohibited.

In addition to the regulations contained in 43 CFR 8361, the following supplemental rules will be applied to all Public Lands and related waters.

1. Persons may camp or occupy any specific location within designated campgrounds, or on public lands within the Albuquerque District, New Mexico for a period of not more than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas with specially designated camping stay limits. The 28-day period will begin when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation during the 28-day period. After the 14th day of occupation, campers must move outside of a 25 mile radius of the previous location. Camping means the erection and use of a tent or shelter of natural or synthetic material; preparing a sleeping bag or other bedding material for use; mooring of a vessel; use of a vehicle, camper, trailer, or other self-contained camping unit for the apparent purpose of overnight occupancy. Occupancy is defined as the taking or holding possession of a camp or residence on public land.

2. It is unlawful to park any motor vehicle, or to camp, within 300 yards of any spring, manmade water hole, water well, or watering tank used by wildlife or domestic stock.

3. It is prohibited to erect or maitain any toilet, shower, permanent structure, or other sanitary facilities on public lands.

4. On public land where off-road vehicle use is permitted, all such vehicles must be equipped within an approved spark arrester and muffler and must display a State of New Mexico (or any other State's) off-road vehicle registration sticker.

5. Possession or use of fireworks is prohibited.

6. Compliance with all applicable State of New Mexico regulations for boating safety, equipment, and registration is required on all public lands and related waters.

FOR FURTHER INFORMATION CONTACT: John Bristol, Outdoor Recreation Planner, Bureau of Land Management, Albuquerque District, 435 Montano NE, Albuquerque, New Mexico 87107, (505) 761–4504.

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1–6. These rules have been recommended and adopted through the development of individual resource management plans and recreation management plans. The rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected.

Dated: August 11, 1989.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 89–19367 Filed 8–16–89; 8:45 am]

BILLING CODE 4310–FB–M

[NM 940–09–4730–12]

New Mexico; Filing of Plat of Survey

August 11, 1989.

The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Sante Fe, New Mexico, effective at 10:00 a.m. on October 6, 1989.

A survey representing the dependent resurvey of certain small holding claim boundaries, the survey of portions of the 1989 right and left banks of the Embudo River, the medial line of a portion of the 1989 channel of the Embudo River, and partition lines, in section 19, Township 23 North, Range 10 East, New Mexico Principal Meridian, New Mexico, executed under Group 769.

This survey was requested by Albuquerque District Manager, Albuquerque, NM.

A survey representing the dependent resurvey of portions of the east and south boundaries of the Agua Salada Grant, and the survey of the west boundary of the Armijo Ranch Tract within the Agua Salada Grant, New Mexico Principal Meridian, New Mexico, executed under Group 840.

This survey was requested by the Assistant Area Director, Bureau of Indian Affairs, Albuquerque, NM.

A survey representing the dependent resurvey of the 1873 south boundary of the Cherokee lands, a portion of the south boundary, a portion of the subdivisional lines, and the adjusted record meanders of portions of the 1873 right and left banks of the North Fork of the Canadian River, and the subdivision of section 34, the survey of a portion of the medial line of the avulsed channel of the North Fork of the Canadian River, and partition lines, in section 34, Township 20 North, Range 16 West, Indian Meridian, Oklahoma, executed under Group 58.

This survey was requested by the Area Manager, Oklahoma Resource Area Headquarters, Oklahoma City, Oklahoma.

A survey representing the dependent resurvey of a portion of the subdivisional lines, and the adjusted record meanders of a portion of the 1872 right bank of the Cimarron River in section 8, Township 17 North, Range 2 East, Indian Meridian, Oklahoma, executed under Group 58.

This survey was requested by the Area Manager, Oklahoma Resource Area Headquarters, Oklahoma City, Oklahoma.

A survey representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 9, and the survey of a lot in section 9, Township 25 North, Range 9 East, Indian Meridian, Oklahoma, executed under Group 55.

This survey was requested by the Director, Muskogee Area Office, BIA, Muskogee, Oklahoma.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

John P. Bennett,

Chief, Branch of Cadastral Survey.

[FR Doc. 89–19368 Filed 8–16–89; 8:45 am]

BILLING CODE 4310–FB–M

[OR–943–09–4214–10; GP9–307; OR–45225(WASH)]

Proposed Withdrawal and Opportunity for Public Meeting; Correction

The heading and acreage in FR Doc. 89–17342 published on pages 30954 and 30955, in the issue of Tuesday, July 25, 1989, are hereby corrected as follows:

On page 30954, in the heading, Washington was omitted after "Public Meeting" and is corrected to read "Public Meeting; Washington".

On page 30954, in the summary, and on page 30955 following the land description, the acreage reads "640" and is corrected to read "2,900".

Dated: August 8, 1989.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–19328 Filed 8–16–89; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–09–4213–10; GP9–306; WASH–02220A]

Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 265 acres of National Forest System land for protection of an addition to the Sullivan Lake Recreation Area and Summer Homesite. The land has been closed to location and entry under the United States mining laws since the application was posted to the official public land records on February 16, 1972.

DATE: Comments must be received by November 21, 1989.

ADDRESS: Comments should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: On February 3, 1972, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Willamette Meridian

Colville National Forest

T. 39 N., R. 44 E.,
Sec. 29, SE¼SW¼;
Sec. 32, E½W½ and W½SE¼, except those portions withdrawn by Public Land Order No. 1685 of July 21, 1958, for the Sullivan Creek Recreation Area.

The area described contains, after making the above mentioned exception, approximately 265 acres in Pend Oreille County, Washington.

The purpose of the proposed withdrawal is to protect an addition to the Sullivan Lake Recreation Area and Summer Homesite. The land involved is located adjacent to the existing Sullivan Lake/Sullivan Creek Recreational Complex approximately six miles east of the town of Metaline Falls, Washington.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing on or before November 21, 1989, to the Oregon/Washington State Director, Bureau of Land Management, at the address indicated above.

Notice is herby given that an opportunity for a public meeting is afforded on connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being head must submit a written request to the Oregon/Washington State Director, Bureau of

Land Management, on or before November 21, 1989. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

This is the first publication in the **Federal Register** of the notice of proposed withdrawal WASH 0222A. Under the provisions of 43 CFR 2310.2(b), the land will be segregated, as specified above, through October 20, 1991, unless the application is denied or cancelled or the withdrawal is approved prior to that date. The Forest Service has authority to permit all temporary uses during the segregative period with the exception of the disposal of the mineral resources under the mining laws.

The temporary segregation of the land in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands.

Dated: August 8, 1989.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-19329 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Meeting of the Royalty Management Advisory Committee

August 9, 1989.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that the Royalty Management Advisory Committee (RMAC) will meet in Lakewood, Colorado, at the location and on the dates identified below. The purpose of this meeting is for the Strategic Planning Work (Panel) to present to RMAC its findings and recommendations with regard to Royalty Management Program (RMP) improvements and changes in mission and performance.

LOCATION AND DATES: The RMAC will meet at the Sheraton Hotel and Conference Center, 360 Union Blvd., Lakewood, Colorado, on September 7 and 8, 1989. The RMAC will meet from 9:00 a.m. to 5:00 p.m. on September 7 and 9:00 a.m. to 3:00 p.m. on September 8. An evening session on September 7 will be scheduled during the day session if it is deemed necessary by the Committee chairperson and members. For overnight accommodations at the Sheraton Hotel in Lakewood, call 1-800-325-3535 or (303) 987-2000.

The meetings will be open to the public. Public attendance may be limited to the space available. Members of the public will be given an opportunity to address the Committee and questions from the public will be addressed at a designated time during each session. Written statements should be submitted by September 1, 1989, to the address listed below. Minutes of this meeting will be available for public inspection and copying by September 29, 1989, at the same address.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, Box 25165, Mail Stop 660, Denver, Colorado 80225, Telephone Number (303) 231-3410, FTS 326-3410.

SUPPLEMENTARY INFORMATION: At its June 22, 1989, meeting RMAC established a Strategic Planning Work Panel to review the RMP draft Strategic Plan for Operations and Systems and make recommendations as to conclusions drawn in the plan. In addition, the Panel was asked to review and make recommendations on any royalty management improvements being contemplated in response to concerns recently expressed by the Senate Select Committee.

A written report containing the Panel's recommendations will be submitted to RMAC for review and approval at the September 7-8, 1989, meeting. In addition to the written report, the Panel chairperson and/or designee will make an oral presentation on the Panel's work, findings, and recommendations. Any recommendations of the Panel will be reviewed and voted on by RMAC at the September 7-8, 1989, meeting.

Dated: August 10, 1989.

Jerry D. Hill,

Associated Director for Royalty Management.

[FR Doc. 89-19290 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Elf Aquitaine Operating, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Elf Aquitaine Operating, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5499, Block 202, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freshwater City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 9, 1989. Comments must be received on or before September 1, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested

parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: August 10, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-19330 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Flash Gas & Oil Southwest, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Flash Gas & Oil Southwest, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6721, Block 287, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 8, 1989. Comments must be received on or before September 1, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: August 10, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-19331 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 3601 and 2933, Blocks 62 and 63, respectively, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on August 10, 1989. Comments must be received on or before September 1, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties because effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in reviews § 250.34 of title 30 of the CFR.

Dated: August 11, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-19332 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Central Valley Project/State Water Project Water Conveyance and Purchase Contract; California

AGENCY: Bureau of Reclamation.

ACTION: Notice of intent to prepare a draft environmental impact statement/environmental impact report (EIS/EIR).

SUMMARY: Pursuant to section 201(2)(C) of the National Environmental Policy Act of 1969, as amended, and section 21000 et seq., of the California Environmental Quality Act of 1970, as amended, the U.S. Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) propose to prepare an EIS/EIR to analyze the environmental effects of implementing a water conveyance and purchase contract. The objective of the water conveyance and purchase contract is to make more water available for delivery by each project through additional and more efficient use of Central Valley Project (CVP) and State Water Project (SWP) facilities and water supplies. The surface water is needed to alleviate ground-water overdraft conditions in the San Joaquin Valley. As specified in Article 10(h) of the Coordinated Operations Agreement (COA), the means to achieve the objective and meet the need is for the SWP to purchase water from the CVP and to transport additional water for the CVP. The EIS/EIR will address project, regional, and cumulative impacts of providing water for agricultural, municipal, industrial, and wildlife purposes in CVP/SWP service areas south of the Sacramento-San Joaquin Delta. The diversion of this water would be subject to: (1) The limitations of the existing Corps of Engineers' Delta pumping criteria for the SWP's Harvey O. Banks pumping plant; (2) existing and future Delta quater quality standards in accordance with Article 11 of the COA; (3) applicable requirements of the Reclamation Reform Act; (4) instream flow requirements; and (5) other CVP and SWP obligations.

Four workshops have been scheduled to solicit information from interested public entities and persons in determining the scope of the EIS/EIR.

DATES: The workshops will be held on September 18, 19, 26, and 28, 1989, in Redding, Concord, Irvine, and Fresno, California, respectively, and begin at 7 p.m.

ADDRESS: The workshop locations are:

Redding—Holiday Inn, Fairmont Room, 1900 Hilltop Drive, September 18, 1989.

Concord—Concord Hilton, Golden Gate Room C, 1970 Diamond Boulevard, September 19, 1989.

Irvine—U.C. Irvine Campus, Koll Room, Bren Event Center, Corner of Bridge and Mesa Roads, September 26, 1989.

Fresno—Fresno Hilton, Press Room, 1055 Van Ness, September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Vogelsang, Environmental Specialist, Division of Planning, California Department of Water Resources, 1416 Ninth Street, Room 252-32, Sacramento, CA 95814, (916) 445-8669; or Mr. Rich Breitenbach, Environmental Specialist, U.S. Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, (916) 978-5134.

SUPPLEMENTARY INFORMATION: The Coordinated Operations Agreement (COA) signed on November 24, 1986, provides the basis for coordinated operations between the CVP and the SWP. Article 10(h) of the COA provides guidelines for the DWR and Reclamation to negotiate a contract for the sale of CVP water to DWR and the conveyance of CVP water through SWP facilities.

The SWP has the ability to convey more water south of the Delta than it presently does. On the other hand, Reclamation is unable to deliver some of its water south of the Delta because of limited capacity in CVP facilities. The 10(h) contract would provide the means for DWR to purchase and delivery additional water to its contractors south of the Delta and at the same time provide Reclamation the means to convey more water to its users south of the Delta. CVP water to be conveyed and purchased is: (1) That portion of the CVP's firm yield which is either not contracted or under-contract but not presently being used; and (2) water which is in addition to CPV's firm yield.

The CVP firm yield which has not been contracted or used would be available to both the State and CVP contractors until it is needed by existing contractors or new CVP long-term contractors. This water would be purchased and/or conveyed on the same priority, as Reclamation and DWR would make it available to their respective long-term contractors. Water in excess of the firm yield would be purchased and/or conveyed as available, providing these actions do not diminish deliveries to or increase costs for SWP and CVP long-term contractors.

Allocations of water to CVP users would be addressed in Reclamation's Water Contracting EIS's. The State's purchase would be used to meet Delta outflow requirements. Water that had been used by the SWP to meet Delta outflow requirements would now be allocated to SWP contractors on the basis of contract obligations.

Alternatives to be considered:

1. Preferred Alternative—Under the proposed water conveyance and purchase contract, Reclamation would operate its existing CVP reservoirs to deliver water through existing channels and facilities to the Delta. CVP water sold to DWR would be used by DWR for Delta outflow. SWP and CVP water conveyed by DWR would be transported through the California Aqueduct and other CVP and SWP storage and conveyance facilities to their contractors. The quantity of CVP water to be transported and purchased and the schedule of delivery for such water have not yet been determined. Reclamation and DWR are currently estimating the water conveyance and purchase contract would be for 500,000 acre-feet-per-year (250,000 transported for the CVP and 250,000 sold to DWR). A specific quantity of water would be proposed after the scoping sessions and hydrological studies have been completed.

2. Modifications to Preferred Alternative—Various alternatives are possible by modifying the water conveyance and purchase contract through changes in terms or conditions of the agreement. These changes may include variations in quantities of water, rates and timing of conveyance, purpose of use, any combination of these factors.

3. Alernative to the Water Conveyenace and Purchase Contract—There may be several means for meeting the service area water demands in ways other than outlined in Article 10(h) of the COA. These would include projects to develop additional water supplies, increase reuse of water in the service area, increase CVP conveyance, or reduce water demands in the service area through conservation or other means.

4. No. Action—This alternative is the existing situation. The CVP and SWP would continue to utilize facilities as authorized. Planned projects would come on line as completed.

Environmental review and consultation requirements that will be met concurrently with the National Environmental Policy Act and California Environmental Quality Act proposes include applicable requirements of the Clean Water Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Endangered Species Act, and Executive Orders 11988 and 11990 regarding flood plains and wetlands.

Preliminary analysis suggests that the water conveyance and purchase contract would cause the following impacts:

1. Changes in flow patterns of the Sacramento—San Joaquin Delta including increased regulated inflow and increased exports and changes in seasonal outflows;
2. Changes in river, reservoir, and Delta fish populations;

3. Changes in wildlife populations and vegetation along the river and within the reservoirs and Delta;
4. Changes in water quality and recreation in the river, reservoirs, and Delta;
5. Changes in return flows from irrigated lands with subsequent impacts on San Joaquin Valley and Delta water quality, fish, wildlife, and vegetation;
6. Changes in the composition of constituents in San Joaquin Valley soils; and
7. Changes in Changes resulting from growth-inducing effects such as air quality and socioeconomic conditions.

These effects and others identified during the public scoping process will be discussed in the EIS/EIR.

Raymond H. Willms,

Acting Deputy Commissioner.

[FR Doc. 89-19291 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-09-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0067), Washington, DC 20503, telephone 202-395-7340.

Title: Restrictions of Financial Interests of State Employees, 30 CFR Part 705.

OMB approval number: 1029-0067.

Abstract: Respondents supply information on employment and financial interests. The information is used to determine if respondents are in compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977 which places an absolute prohibition on having a direct or indirect financial interests in underground or surface coal mining operations.

Frequency: Entrance on duty and annually.

Description of respondents: Any State regulatory authority employee or member of advisory boards and commissions established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Act is required to file a statement of employment and financial interests.

Estimated completion time: 20 minutes.

Annual responses: 1,989.

Annual burden hours: 667.

Bureau clearance officer: Andrew F. DeVito 202-343-5954.

Dated: July 6, 1989.

Annetta L. Cheek,

Acting Chief, Division of Regulatory Development.

[FR Doc. 89-19333 Filed 8-16-89; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-287]

Certain Strip Lights; Decision to Review a Portion of an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review a portion of the presiding administrative law judge's (ALJ's) initial determination (ID) finding a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-252-1116.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to Commission rules 210.53-210.56 (19 CFR 210.53-210.56, as amended). On June 27, 1989, the ALJ issued an ID finding a violation of section 337. No petitions for review or government agency comments were received.

Having examined the record in this investigation, including the ID, the Commission has concluded that review of a portion of the ID is warranted. Specifically, the Commission will review the following issue:

Whether it was proper for the ID to contain findings regarding importation, sale, and patent infringement by non-respondents, in light of the following:

—Commission interim rule § 210.58(b);

—The usefulness of such findings to the Commission's consideration of remedy;

—ALJ Order No. 4, which denied complainant's motion to add four foreign companies (all of which are among the non-respondents mentioned in the ID) as respondents;

—The possibility that, following a finding of a violation of section 337 by only one or two respondents, a general exclusion order might be issued based in large part upon findings of unauthorized use by a number of non-respondents which have had no opportunity to appear in the investigation and to contest the allegations at issue; and

—Any other relevant considerations.

Furthermore, the Commission has determined that an additional finding with regard to complainant's registered trademark is warranted by the facts contained in the ID. The Commission has determined that respondent Golden Apple Corporation violated section 337 through the sale in the United States of a product that infringed complainant Vista Manufacturing Company's trademark for "FLEX LITE," Registration No. 1,433,725.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in a respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. In addition, the Commission is interested in receiving submissions regarding what weight should be given by the Commission, in its consideration of an appropriate remedy, to allegations of unauthorized importation by non-respondents generally and, under the circumstances of this investigation, by those non-respondents whose alleged unauthorized importation was known to complainant prior to the filing of the complaint.

If the Commission contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those that are subject to the investigation, and (4) U.S. consumers. The Commission is therefore

interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other persons are encouraged to file written submissions on the issue under review, remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Written submissions from the parties, including any proposed orders, must be filed by August 25, 1989. Written submissions from government agencies and any other persons, and reply submissions from the parties, must be filed by September 1, 1989.

ADDITIONAL INFORMATION: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202)–252–1810.

By order of the Commission.

Issued: August 14, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–19462 Filed 8–15–89; 11:54 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Joint Newspaper Operating Agreement; Las Vegas Sun and Las Vegas Review-Journal

Notice is hereby given that the Attorney General has received an application for approval of a joint operating arrangement between two Las Vegas newspapers. The application was filed on August 8, 1989 by the Las Vegas Sun, Inc. and Donrey of Nevada, Inc. (owner of Las Vegas Review-Journal). The proposed arangement provides that the printing and commercial operation of both newspapers be handled by the Review-Journal. According to the application, the Sun would maintain complete editorial independence.

The Newspaper Preservation Act,. 15 U.S.C. 1801, *et seq.*, requires that joint newspaper operating arrangements such as that proposed by the Sun and the Review Journal have the prior written consent of the Attorney General of the United States in order to qualify for the antitrust exemption provided by the Act. Before granting his consent, the Attorney General must find that one of the publications is a failing newspaper and that approval of the arrangement would effectuate the policy and purpose of the Act.

In accordance with the Newspaper Preservation Act Regulations, published at 28 CFR part 48, copies of the proposed arrangement and other materials filed by the newspapers in support of the application are available for public inspection in the main offices of the newspapers involved and at the Department of Justice, 633 Indiana Avenue, NW., Room 529, Washington, DC 20530.

Any person with views about the proposed arrangement may file written comments stating the reasons why approval should or should not be granted, or requesting that a hearing be held on the application. A request for hearing must set forth the issues of fact to be determined and the reason that a hearing is believed necessary to determine them. Comments shall be filed by mailing or delivering five copies to the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, Washington, DC 20530, and must be received by September 18, 1989.

Replies to any comments filed on or before that date may be filed on or before September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Janis Sposato, General Counsel, Justice Management Division, 202–633–3452.

Dated: August 10, 1989.

Harry H. Flickinger,

Assistant Atorney General for Administration.

[FR Doc. 89–19334 Filed 8–16–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; State of Connecticut Department of Transportation

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America* v. *State of Connecticut Department of Transportation*, No. H–89–504 (EBB) (D. Conn.), was lodged with the United States District Court for the District of Connecticut, on August 8, 1989.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharges of fill material into various waterbodies and their adjacent wetlands in Norwalk, Connecticut, which are alleged to constitute "waters of the United States." The consent decree requires the State of Connecticut to pay a civil penalty of $2,500.00, and to comply with the terms of an interagency agreement with the Corps of Engineers regarding the need for 404 permits on future road projects.

The Department of Justice will receive until September 29, 1989, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, P.O. Box 23986, Washington, DC 20026–3986, Attention: Mary Elizabeth Ward, and should refer to *United States* v. *State of Connecticut Department of Transportation*, DJ Reference No. 90–5–1–1–2919.

The consent decree may be examined at the Clerk's Office, United States District Court, 141 Church Street, New Haven, Connecticut 06508.

Richard B. Stewart,

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 89–19361 Filed 8–16–89; 8:45 am]

BILLING CODE 4410-01-M

Membership of the Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of the Department of Justice's 1989 Senior Executive Service (SES) Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its SES Performance Review Boards. The purpose of the Performance Review Boards are to provide fair and impartial review of Senior Executive Service performance appraisals and to make recommendations to the Deputy Attorney General regarding the ratings.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Oser, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530. Telephone: (202) 272–8235.

Paul W. Mathwin,

Executive Secretary, Senior Executive Resources Board.

1989 Performance Review Board Membership

Antitrust Division
- Jon M. Joyce, Chief, Economic Regulatory Section
- P. Terry Lubeck, Chief, Litigation II Section
- Catherine G. O'Sullivan, Chief, Appellate Section

Bureau of Prisons
- Gilbert L. Ingram, Assistant Director, Correctional Programs Division
- Wade B. Houk, Assistant Director, Administration Division
- Douglas T. Lansing, Assistant Director, Human Resource Management Division
- Ronald Waldron, Senior Deputy Assistant Director, Health Services Division

Civil Division
- Jeffrey Axelrad, Director, Torts Branch
- David Epstein, Director, Commercial Litigation Branch
- Vincent M. Garvey, Deputy Director, Federal Programs Branch

Civil Rights Division
- Nathaniel Douglas, Chief, Educational Opportunities Litigation Section
- Paul Hancock, Chief, Housing and Civil Enforcement Section
- Arthur Peabody, Jr., Chief, Special Litigation Section

Criminal Division
- George Calhoun, Senior Counsel, Asset Forfeiture Office
- Theodore G. Gilinsky, Senior Counsel, Office of Special Investigations
- William S. Lynch, Senior Counsel for Litigation Office of the Assistant Attorney General

Executive Office for U.S. Attorneys
- Richard C. DeHaan, Associate Director

Executive Office for U.S. Trustees
- Philip M. Zeidner, Deputy Director

Immigration and Naturalization Service
- C. Bradley Cates, Special Counsel to the Commissioner
- Elizabeth C. MacRae, Associate Commissioner for Information Systems
- James A. Puleo, Assistant Commissioner for Adjudications
- Paul W. Virtue, Deputy General Counsel

Justice Management Division
- Richard J. Krips, Director, Legal and Information Systems Staff
- Gilbert M. Leigh, Jr., Assistant Director, Management and Planning Staff
- Charles R. Neill, Director, Systems Policy Staff
- Warren Oser, Director, Personnel Staff

Land and Natural Resources Division
- William M. Cohen, Chief, General Litigation Section
- William J. Kollins, Chief, Land Acquisition Section
- Anne H. Shields, Chief, Policy, Legislation and Special Litigation Section

Office of Justice Programs
- Jack A. Nadol, Comptroller

Tax Division
- Gary R. Allen, Chief, Appellate Section
- Ronald A. Cimino, Regional Chief, Western Region
- Donald J. Garvin, Chief, Office of Special Litigations

U.S. Marshals Service
- Joseph B. Enders, Assistant Director for Operations Support

[FR Doc. 89–19363 Filed 8–16–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on July 18, 1989 filed written notifications, on behalf of Bellcore and Samsung Software America, Inc., (hereinafter known as "Samsung") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Samsung is a Delaware corporation with its principal place of business at 1 Corporate Drive, Andover, Massachusetts 01810.

Bellcore and Samsung entered into an agreement effective April 6, 1989 to collaborate on research to better understand the application of object-oriented programming systems and knowledge bases methodologies and concomitant technologies to exchange access services.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 89–19359 Filed 8–16–89; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act of 1984; UNIX International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. on August 1, 1989, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of UNIX International, Inc. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 1, 1989, 54 FR 8608. On May 4, 1989, UNIX filed an additonal written notification. the Department published a notice in the **Federal Register** in response to the additional notification on June 22, 1989 (54 FR 26266).

As of July 21, 1989, the following have become members of UNIX International, Inc.:

Acer
Addamax
Alcatel

Alliant
Amdahl
Anderson
Avcom
ASCII
AT&T
C. Itoh
Cadence
CBIS
CDC
Citibank
Concurrent
Convergent
CTG
Dansk Data
Data General
Dell Computer
DMR
Dolphin Server
DuPont Fibers
EDS/GM
EMSCA
Emulex
Encore
Ericsson
ERSO–ITRI
Floating Point Systems
Fuji-Xerox
Fujitsu
German UNIX User's Group (GUUG)
HCL
ICL
III
Informix
Integrated Solutions
Intel
Interactive
Locus
Micro Focus
MIPS
Modcomp
Motorola
NBI
NCR
NEC
Nihon Unisys
Nippon Steel
Oki Electric
Olivetti
Omron
Oracle
Phoenix
Prime
Prisma
Pyramid
Ricoh
Relational Technologies
SCO
Sequent
Sequoia
Silicon Graphics
Sony
SSBA
Stellar
Stratus
Sun Microsystems
Sybase
Tadpole
Tandem
Tata Consultancy
Texas Instruments
Thomson-CETIA
Tolerant
Topologix
Toshiba
Unisoft
Unisys
Wang
Xerox
88 Open

Joseph H. Widmar

Director of Operations, Antitust Division.

[FR Doc. 89–19360 Filed 8–16–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on National Retiree Income Policy of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:00 a.m., Friday, September 8, 1989, in Suite C–5515, Seminar Room 1–A, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine member work group was formed by the Advisory Council to study issues relating to a national retiree income policy for employee welfare plans covered by ERISA.

The purpose of the September 8 meeting is to:

1. Hear from invited witnesses relative to desirability of the adoption of a formal national retiree income policy.

2. Entertain comments from the general public.

3. Discuss among members of the work group, plans for the coming year.

The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before September 5, 1989 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW., Washington DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 5, 1989.

Signed at Washington, DC this 11th day of August, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 89–19280 Filed 8–16–89; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89–56)]

Granting of Federal Information Processing Standards (FIPS) Waiver Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of granting of FIPS waiver request.

SUMMARY: Pursuant to section 3506(b) of Title 44 of the U.S. Code, the authority to waive, under conditions specified by the Secretary of Commerce, NASA hereby gives notice of granting a request for waiver of FIPS 60–2, 61–1, and 97 for the Director, Marshall Space Flight Center, to acquire the vector processing portion of the replacement for the Engineering Analysis and Data System (EADS). If the selected system has one mainframe for both vector and scalar processing, then the waiver will apply to the entire system.

DATE: The waiver was effective May 18, 1989.

ADDRESS: National Aeronautics and Space Administration, Code NT, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace O. Keene, Assistant Associate Administrator for Information Resources Management, 202–453–1775.

Dated: August 11, 1989.

C. Howard Robins, Jr.,

Associate Administrator for Management.

[FR Doc. 89–19346 Filed 8–16–89; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would signficantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* September 11, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for NEH/Reader's Digest Teacher-Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1990.

2. *Date:* September 11–12, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Preservation Program, submitted to the Office of Preservation, for projects beginning after January 1, 1990.

3. *Date:* September 13, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for NEH/Reader's Digest Teacher-Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1990.

4. *Date:* September 15, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for NEH/Reader's Digest Teacher-Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1990.

5. *Date:* September 18, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for NEH/Reader's Digest Teacher-Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1990.

6. *Date:* September 27, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Editions applications in American Materials, submitted to Division of Research Programs, for projects beginning after April 1, 1990.

Stephen J. McCleary,
Advisory Committee Management Officer

[FR Doc. 89–19382 Filed 8–16–89; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Special Committee to Review the Severe Accident Risks Report; Meeting

The NRC Speical Committee to Review the Severe Accident Risks Report (NUREG–1150) will hold its second meeting on September 13 and 14 at the Sheraton-Old Town Hotel, Albuquerque, New Mexico. The entire meeting will be open to the public.

Notice of the establishment of this committee and its purpose was published in the Federal Register on June 21, 1989 (54FR26124). The availability of the draft of NUREG–1150, "Severe Accident Risks; An Assessment for Five U.S. Nuclear Power Plants" was made available to the public on July 19, 1989.

Any member of the public wishing to file a written statement with the Committee may do so by sending the statement to Mr. Charles B. Bartlett, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The agenda for the meeting has not, at this time, been firmly established. The general topics that the Committee tentatively plans to discuss at this meeting will include the following:

—The extent to which key safety experiments were factored into the NUREG–1150 analysis;

—The human factors analyses that were used in the study and the effects of recovery actions that were assumed to be possible;

—A review of the Mark-I containment failure scenario to identify which elements in the assessment were the result of engineering analysis and which were based on elicitation of opinion based on engineering;

—A review and comparison of the conclusions of expert panels set forth in the present draft of NUREG–1150 and those conclusions presented in the first draft;

—Views of report contributors and NRC staff as to where, at the lower end of the distributions, probability distributions should be truncated and how should one deal with probability distributions that are spread over several decades and/or are bimodal;

—A review of NUREG–1150 results in light of the greatest uncertainty found in the tails of the probability distributions;

—An indepth review of the seismic inputs into the 1150 study including the use and effects of the two different seismic hazard distributions presented;

—Views of contributors and staff as to whether the report is a fair representation of the state of understanding and agreement in the field of PRA and reflects similar studies in other countries;

—Views of contributors and staff as to the work done in developing NUREG–1150 results, on plans for archiving codes and panel conclusions for reuse, and how panel conclusions might be modified or replaced as engineering data is improved.

Topics may be added or deleted prior to the meeting. A more detailed agenda will be published in the **Federal Register** when available.

Further information regarding this meeting may be obtained by calling Mr. Charles B. Bartlett on 301–492–3604.

Dated: August 11, 1989.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 89-19255 Filed 8-16-89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 3.48, "Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation or Monitored Retrievable Storage Installation (Dry Storage)," has been developed to conform with revisions to 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste" (53 FR 31651). This guide presents guidance on and a format for the information required by part 72.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publication Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 8th day of August 1989.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 89-19350 Filed 8-16-89; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make avilable to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in this review of applications for permits and licenses

On November 28, 1988, the Nuclear Regulatory Commission published a notice of proposed rulemaking (53 FR 47822) that would require commercial nuclear power plant licensees to implement effective maintenance programs. Public comments received on the proposed rule have been analyzed, particularly those related to the structures, systems, components, and extent of activities included in the maintenance program, and are reflected in a draft regulatory guide.

This draft guide, temporarily identified by its task number, DG-1001 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Maintenance Programs for Nuclear Power Plants" and is intended for Division 1, "Power Reactors." This guide is being developed to provide guidance to nuclear reactor licensees and applicants on methods acceptable to the NRC staff for planning, conducting, and assessing the effectiveness of nuclear power plant maintenance programs to prevent the degradation or failure of, and to promptly restore the intended function of, structures, systems, and components that can significantly affect safety or security.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. Comments from the public and industry on this guide will be extremely valuable to the NRC staff in establishing a final regulatory position on maintenance programs.

Specific comments are solicited on the following:

1. What level of detail should be included in the regulatory guide?
2. Is the scope of systems, structures, and components covered by the regulatory guide appropriate?
3. What criteria could be used to determine that a maintenance program is fully effective and additional improvement is not essential from a safety standpoint?
4. Is it appropriate to use quantitative goals, which are described in Regulatory Position 3 of the draft regulatory guide, directed toward achieving a satisfactory level of performance in plant maintenance programs consistent with the level achieved by the top performing U.S. plants of similar design?
5. What quantitative measures would be appropriate for such goals? Should they be at the plant level, system level, component level, or some combination thereof?

The NRC staff is also planning to conduct a workshop early in 1990 to discuss this guidance on maintenance programs and the public comments received. There will be a public announcement of the workshop when plans have been completed.

Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be accompanied by supporting data. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by December 1, 1989.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be

accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 10th day of August 1989.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 89-19351 Filed 8-16-89; 8:45 am]

BILLING CODE 7590-01-M

[NUREG-0800]

Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; Issuance and Availability of Revised Sector

The U.S. Nuclear Regulatory Commission (NRC) has published a revision to section 13.1.2–13.1.3, "Operating Organization" of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

The revision of SRP section 13.1.2–13.1.3 (Revision 3) added reference to Regulatory Guide 1.114, "Guidance to Operators at the Controls and to Senior Operators in the Control Room of a Nuclear Power Unit." Changes were made to delete the description of certain requirements with respect to licensed operators and senior operators that are now described in 10 CFR 50.54(m), and to include reference to the Commission Policy Statement on Engineering Expertise of Shift in place of a statement on the Shift Technical Advisor.

The revised SRP section is effective immediately. A copy will be available in the Commission's Public Document Room in approximately 2 weeks. Copies of the revised SRP Section, or of the complete Standard Review Plan, NUREG–0800, Accession No. PD–81–920199 are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650.

Dated at Rockville, Maryland this 9th day of August 1989.

For the Nuclear Regulatory Commission.

Edward J. Butcher, Jr.,

Chief, Inspection and Licensing Program Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19353 Filed 8-16-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-313 and 50-368]

Arkansas Power and Light Co., Arkansas Nuclear One, Unit Nos. 1 and 2; Withdrawal of Application for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Arkansas Power and Light Company (the licensee) to withdraw its December 4, 1987 applications for proposed amendments to Facility Operating License Nos. DPR–51 and NPF–6 for the Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO–1&2), located in Pope County, Arkansas.

The proposed amendments would have revised the ANO–1&2 Technical Specifications to decrease the review requirements of the Plant Safety Committee.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 12, 1988 (53 FR 767). However, by letter dated August 3, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the applications for amendments dated December 4, 1987, and the licensee's letter dated August 3, 1989, which withdrew the applications for license amendments.

The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland this 10th day of August, 1989.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate IV, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-19352 Filed 8-16-89; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Representative Payee Parental Custody Monitoring

(2) *Form(s) submitted:* G–99d

(3) *OMB Number:* New Collection

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval

(5) *Type of request:* New collection

(6) *Frequency of response:* On occasion

(7) *Respondents:* Individuals or households

(8) *Estimated annual number of respondents:* 5,900

(9) *Tootal annual responses:* 5,900

(10) *Average time per response:* .0666 hours

(11) *Total annual reporting hours:* 393

(12) *Collection description:* Under section 12(a) of the RRA, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as a representative payee. The collection obtains information needed to verify that a parent-for-child payee still retains custody of the child.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Ronald J. Hodapp, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald J. Hodapp,

Director of Information Resources Management.

[FR Doc. 89-19335 Filed 8-16-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27112; File No. SR-BSE-89-5]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Review of Proposed Specialist Combinations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1989, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities

and Exchange Commission ("Commission") the proposed rule as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would authorize the BSE's Executive Committee to review proposed specialist combinations that, in the Exchange's view, may lead to undue concentration within the specialist community. The text of the proposed rule follows.

Specialist Concentration

1. The Executive Committee will review any arrangement where previously separate specialist organizations would be operating under common control and would comprise:

(a) 15% or more of the 100 most actively traded CTA stocks; or,

(b) 15% or more of the second 100 most actively traded CTA stocks; or,

(c) 20% or more of the third 100 most actively traded CTA stocks; or

(d) 15% or more of all the CTA stocks eligible for trading on the BSE where the Free List contains fewer than 100 issues.

The total number of transactions reported to the Consolidated Tape during the previous four calendar quarters shall be used to rank Exchange eligible CTA stocks to determine the most actively trade stocks.

2. The Executive Committee shall approve or disapprove the proposed combination based on its assessment of the following considerations:

(a) Specialist performance and market quality in the stocks subject to the proposed combination;

(b) The effects of the proposed combination in terms of the following criteria:

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(c) Commitment to the Exchange market, focusing on whether the constituent specialist organizations engage in business activities that might detract from the resulting specialist organization's willingness or ability to act to strengthen the Exchange agency/auction market and its competitiveness in relation to other markets; and

(d) The effect of the proposed combination on overall concentration of specialist organizations.

3. Except under extraordinary circumstances, all applications will be approved or disapproved within 60 days of receipt by the Exchange.

4. The applicable concentration limits shall in no way impose restrictions on any specialist unit to compete for new stocks through the Exchange's regular allocation process.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. The purpose of the proposed rule is to provide a process for reviewing certain proposed mergers, acquisitions and other combinations between or among specialist units.[1] The Exchange (in SR–BSE–87–5) stated that the following concerns were considered in proposing a specialist concentration rule:

1. Unless reasonable limits or guidelines are established a disproportionately large number of top quality stocks could end up under the control of one or a few firms as a result of business combinations.

Similarly, overall high concentrations could occur regardless of the measure of quality.

2. If specialist units were permitted to aggregate control or dominate activity on the floor of the Exchange the potential for increasing orderflow would be seriously diminished.

3. Entry to the BSE by outside firms would become much more difficult if the universe of firms from which they could choose to affiliate is limited. Further, affiliations with larger firms would become more difficult to negotiate.

4. The Exchange cannot afford to be dependent on any one firm for a disproportionately large portion of its revenues. The increased economic risk to the Exchange would pose similar risk to other members dependent upon the Exchange to effectively administer and provide its services to the marketplace.

5. Competition for stocks would be reduced with fewer firms and the likelihood of influence by larger firms over the policies or direction of the Exchange would be significantly increased.

6. The integrity of the entire stock allocation process would be impaired if the methods for measuring relative performance are made ineffective by reduced independence, undue influence, limited participants and reduced competition.

7. Fewer and larger specialist units could reduce incentives for quality markets and consequently higher standards for performance.

b. The Statutory basis for the proposed rule is section 6(b)(5) of the Act in that the BSE will be able to monitor tendencies toward concentration in the specialist community and intervene to prevent undue concentration.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[1] The Exchange initially filed guidelines for reviewing specialist combinations in File No. SR-BSE-87-5. (File No. SR-BSE-87-5 was withdrawn when File No. SR-BSE-89-5 was filed.)

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submission should refer to File No. SR-BSE-89-5 and should be submitted by September 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19374 Filed 8-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27113; File No. SR-BSE-89-4]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Crosses, Fictitious Transactions, and Transactions in Privileges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1989, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule changes is to (i) eliminate the requirement that all crosses be effected in the presence of a Floor Governor; (ii) eliminate the specific intent requirement for fictitious transactions; and, (iii) abrogate an antiquated prohibition concerning offers to buy or sell privileges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. The BSE proposes to make the following changes to Chapter 11 of the Exchange's Rules of the Board of Governors:

Sec. 18. Orders to Buy and Sell the Same Security. The BSE is proposing to eliminate the requirement that all crosses be effected in the presence of a Floor Governor. The existing provision is impractical because the number of crosses executed on a daily basis has increased along with the level of activity throughout the industry and it would be disruptive to Governors to be compelled to witness such trades. Moreover, this extra time would discourage the execution of crosses on our Floor and be disadvantageous to our customers.[1]

Sec. 21. Fictitious Transactions. Certain language has been deleted to eliminate the specific intent element for fictitious transactions and to provide a broader prohibition against effecting fictitious transactions.

Sec. 22. Transactions in Privileges Forbidden. The BSE has abrogated an antiquated prohibition against offers to buy or sell privileges.

b. The statutory basis for the proposed changes is section 6(b)(5) of the Act in that they promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submission should refer to File No. SR-BSE-89-4 and should be submitted by September 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19375 Filed 8-16-89; 8:45 am]

BILLING CODE 8010-01-M

[1] The BSE also is proposing to eliminate the right of other floor members to object to a cross under certain circumstances.

[34-27115; SR-MCC-89-9]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corporation Relating to Buy-ins and Withdrawals of U.S.A. Medical Corporation

August 9, 1989

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 7, 1989 the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the text of a proposed rule change of Midwest Clearing Corporation ("MCC") regarding Buy-Ins and Withdrawals of the stock of U.S.A. Medical Corporation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify MCC's procedures regarding Buy-Ins and Withdrawals of U.S.A. Medical Corporation. Effective August 1, 1989, MCC will no longer process withdrawal requests, accept buy-in liability or process buy-ins in the securities of U.S.A. Medical Corporation (CUSIP No. 902916-10-5) ("U.S.A. Medical"). MCC will only process withdrawal requests when it has sufficient security denominations on deposit to process and fulfill such requests.

MCC's actions are based on the fact that its Correspondent Depository has advised MCC that certain certificates of U.S.A. Medical ultimately due MCC, on behalf of Participants, are the subject of a court proceeding involving the securities' transfer agent, the Correspondent Depository and other named parties. As a result, the Correspondent Depository is unable to deliver stock of U.S.A. Medical ultimately due MCC.

In addition, as the attached Special Notice indicates, on March 1, 1989, the U.S. District Court (District of Utah) has determined that the stock of U.S.A. Medical had never been registered with any proper regulatory authority and was traded as part of a fraudulent scheme and device to manipulate and artificially inflate the price. The stock of U.S.A. Medical also continues to be subject to a Default Order by the Securities Division of the Department of Commerce of the State of Utah.

Copies of the Special Notice will be distributed to those Participant(s) maintaining positions in U.S.A. Medical. Since January 30, 1989, the stock of U.S.A. Medical has not been eligible for clearing services at MCC (except for Trade-for-Trade transactions which have not been eligible since March 1, 1989); MCC has been processing, and will continue to process, withdrawals as sufficient security denominations become available.

MCC believes that the proposed rule change is consistent with Section 17A of the Securities Exchange Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MCC has not received any comments from Participants on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within sixty (60) days of the filing of such proposed rule change, the Commissoin may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR-MCC-89-9 and should be submitted by September 7, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

August 1, 1989

To: MSTC/MCC participants maintaining positions in U.S.A. Medical Corporation

Attention: Chief Executive Officer, Operations Manager/Head Cashier

Subject: Special notice regarding buy-ins and withdrawals of U.S.A. Medical Corporation

Effective immediately, MSTC/MCC will no longer process withdrawal requests, and MCC will no longer accept buy-in liability or process buy-ins, in the securities of U.S.A. Medical Corporation ("U.S.A. Medical"). MSTC/MCC will only process withdrawal requests when it has sufficient security denominations on deposit to process and fulfill such requests.

MSTC/MCC's foregoing action is based on the fact that its Correspondent Depository has advised MSTC/MCC that certain certificates of U.S.A. Medical ultimately due MSTC/MCC, on behalf of Participants, is the subject of a court proceeding involving the Securities' transfer agent, the Correspondent Depository and other named parties. As a result, the Correspondent Depository is unable to deliver stock of U.S.A. Medical ultimately due MSTC/MCC.

In addition, on March 1, 1989, the U.S. District Court (District of Utah) determined that the stock was unlawfully issued, had never been registered with any proper regulatory authority, was not exempt from

such requisite registration and had been and was continuing to be traded illegally. The Court also found that the stock traded as part of a fraudulent scheme and device to manipulate and artificially inflate the price of that stock in violaton of the securities laws.

Finally, since March 27, 1989, the stock of U.S.A. Medical continues to be the subject of a Default Order by the Securities Division of the Department of Commerce of the State of Utah.

MSTC/MCC's foregoing action is also based on MCC's existing Buy-In Procedures (B-88/8776) (August 25, 1988), as well as MSTC Rules, including, but not limited to, Article I, Rule 2 (Eligible Securities); Article I, Rule 3, Sec. 1 (n) (General Provisions); Article II, Rule 1, (Delivery and Withdrawal of Securities (including Delivery in Contravention of Law Not Required)) and MCC Article I, Rule 2 (Eligible Securities), Article I, Rule 3, Sec. 3(n) (General Provisions), Article III, Rules 3 and 4 (Withdrawal of Securities/Failure to Deliver Securities).

Any Participant having any questions regarding this Special Notice may contact Jeffrey E. Lewis, Associate Counsel at (312) 663-2798.

Jeffrey E. Lewis,

Associate Counsel, MSTC/MCC.

[FR Doc. 89-19376 Filed 8-16-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27120 SR-MSTC-89-7]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Securities Trust Company Relating to Buy-Ins and Withdrawals of U.S.A. Medical Corporation

August 9, 1989

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 7, 1989 the Midwest Securities Trust Company filed with the Securities Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the text of a proposed rule change of Midwest Securities Trust Company ("MSTC") regarding Buy-Ins and Withdrawals of the stock of U.S.A. Medical Corporation.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify MSTC's procedures regarding Buy-Ins and Withdrawals of U.S.A. Medical Corporation. Effective August 1, 1989, MSTC will no longer process withdrawal requests (and Midwest Clearing Corporation will not longer accept buy-in liability or process buy-ins) in the securities of U.S.A. Medical Corporation (CUSIP No. 902916-10-5) ("U.S.A. Medical"). MSTC will only process withdrawal requests when it has sufficient security denominations on deposit to process and fulfill such requests.

MSTC's actions are based on the fact that its Correspondent Depository has advised MSTC that certain certificates of U.S.A. Medical ultimately due MSTC, on behalf of Participants, are the subject of a court proceeding involving the securities' transfer agent, the Correspondent Depository and other named parties. As a result, the Correspondent Depository is unable to deliver stock of U.S.A. Medical ultimately due MSTC.

In addition, as the attached Special Notice indicates, on March 1, 1989, the U.S. District Court (District of Utah) has determined that the stock of U.S.A. Medical had never been registered with any proper regulatory authority and was traded as part of a fraudulent scheme and device to manipulate and artificially inflate the price. The stock of U.S.A. Medical also continues to be subject to a Default Order by the Securitites Division of the Department of Commerce of the State of Utah.

Copies of the Special Notice will be distributed to only those Participant(s) maintaining positions in U.S.A. Medical. Since January 30, 1989, the stock of U.S.A. Medical has not been eligible for depository or depository-related services at MSTC and MSTC has been, and will continue to, process withdrawals as sufficient security denominations become available.

MSTC believes that the proposed rule change is consistent with section 17A of the Securities Exchange Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MSTC has not received any comments from Participants on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to file number SR–MSTC–89–7 and should be submitted by September 7, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

August 1, 1989

To: MSTC/MCC Participants Maintaining Positions in U.S.A. Medical Corporation

Attention: Chief executive officer, operations manager/head cashier

Subject: Special Notice Regarding Buy-ins and Withdrawals of U.S.A. Medical Corporation

Effective immediately, MSTC/MCC will no longer process withdrawal requests, and MCC will no longer accept buy-in liability or process buy-ins, in the securities of U.S.A. Medical Corporation ("U.S.A. Medical"). MSTC/MCC will only process withdrawal requests when it has sufficient security denominations on deposit to process and fulfill such requests.

MSTC/MCC's foregoing action is based on the fact that its Correspondent Depository has advised MSTC/MCC that certain certificates of U.S.A. Medical ultimately due MSTC/MCC, on behalf of Participants, is the subject of a court proceeding involving the securities' transfer agent, the Correspondent Depository and other named parties. As a result, the Correspondent Depository is unable to deliver stock of U.S.A. Medical ultimately due MSTC/MCC.

In addition, on March 1, 1989, the U.S. District Court (District of Utah) determined that the stock was unlawfully issued, had never been registered with any proper regulatory authority, was not exempt from such requisite registration and had been and was continuing to be traded illegally. The Court also found that the stock traded as part of a fraudulent scheme and device to manipulate and artificially inflate the price of that stock in violation of the securities laws.

Finally, since March 27, 1989, the stock of U.S.A. Medical, continues to be the subject of a Default Order by the Securities Division of the Department of Commerce of the State of Utah.

MSTC/MCC's foregoing action is also based on MCC's existing Buy-In Procedures (B–88/8776) (August 25, 1988), as well as MSTC Rules, including, but not limited to, Article I, Rule 2 (Eligible Securities); Article I, Rule 3, Sec. 1(n) (General Provisions); Article II, Rule 1, (Delivery and Withdrawal of Securities (including Delivery in Contravention of Law Not Required)) and MCC Article I, Rule 2 (Eligible Securities), Article I, Rule 3, Sec. 3(n) (General Provisions), Article III, Rules 3 and 4 (Withdrawal of Securities/Failure to Deliver Securities).

Any Participant having any questions regarding this Special Notice may contact Jeffrey E. Lewis, Associate Counsel at (312) 663–2798.

Jeffrey E. Lewis,

Associate Counsel, MSTC/MCC.

[FR Doc. 89–19377 Filed 8–16–89; 8:45 am]

BILLING CODE 8010–1–M

[Rel. No. IC—17108; 812–7374]

ML-Lee Acquisition Fund II, L.P. et al.; Application

August 11, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Amended Order of Exemption under the Investment Company Act of 1940 ("1940 Act" or the "Act").

Applicants: ML-Lee Acquisition Fund II, L.P., ML-Lee Acquisition Fund (Retirement Accounts) II, L.P. (together with ML-Lee Acquisition Fund II, L.P., the "New Funds"), Mezzanine Investments II, L.P., and Thomas H. Lee Advisors II, L.P. ("Advisors II").

Relevant 1940 Act Sections: Order requested under section 6(c) for exemptions from the provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an amendment to an existing order (Investment Company Act Releases No. 16651, November 23, 1988). The amended order would be substantially similar to the existing order, but would take into account changes in the proposed management structure of the New Funds. As amended, the order would provide that (i) the Independent General Partners of each New Fund would not be "interested persons" of such New Fund, Mezzanine Investments II, L.P., Advisors II, or Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch") by virtue of being general partners of such New Fund, (ii) the Independent General Partners of a New Fund or ML-Lee Acquisition Fund, L.P. (together, "Funds") would not be interested persons of each such Fund because they were Independent General Partners of the other Funds, and (iii) limited partners owning less than 5 percent of the limited partnership units of a Fund would not be "affiliated persons" of such Fund, any other limited partner, any of the Individual General Partners, Mezzanine Investments II, L.P., or Advisors II solely because of their status as limited partners.

Filing Date: The Application was filed on August 10, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 5, 1989, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; the New Funds, Merrill Lynch, and Mezzanine Investments II, L.P., World Financial Center, North Tower, New York, NY 10291–1381; Advisors II, 75 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations: 1. The New New Funds are newly formed Delaware limited partnerships, each governed by an Agreement of Limited Partnership (the "Partnership Agreements"). The New Funds will operate as business development companies pursuant to section 55 of the Act. Thus, the New Funds will be subject to section 55 through 65 of the 1940 Act and to those sections of the Act made applicable to business development companies by section 59 thereof. The New Funds have been organized as limited partnerships because Applicants believe that the partnership form is the appropriate investment vehicle for a closed-end entity of limited duration that will make a limited number of investments.

2. The New Funds have filed a joint registration statement on Form N–2 under the 1933 Act (File No. 33–25816) with respect to an offering of up to 1,000,000 units of limited partnership interest for each of the New Funds. Merrill Lynch will act as the selling agent for the units on a "best efforts" basis.

3. Applicants (other than Mezzanine Investments II, L.P.) have filed another application requesting orders (i) under sections 6(c), 17(d), 57(i) of, and Rule 17d–1 under, the 1940 Act to permit certain joint transactions that would otherwise be prohibited under sections 17(d) and 57(a)(4) of the Act, and (ii) under sections 6(c) and 57(c) of the 1940

Act to permit certain affiliated transactions that would otherwise be prohibited under section 57(a)(1) of the Act. In response to comments from the staff of the SEC, changes were made in the proposed management structure of the New Funds, including the replacement of Advisors II by Mezzanine Investments II, L.P. as the managing general partner of the New Funds. A notice, stating that an order granting the relief requested in the other application will be issued unless the SEC orders a hearing, was issued on August 7, 1989 (Investment Company Act Release No. 17101). The relief requested in the present application is necessary solely because of the changes to the management structure of the New Funds made in connection with the related application.

4. Advisors II is the investment adviser to the New Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Advisors II is a limited partnership, the administrative general partner of which is T.H. Lee Mezzanine II, a Massachusetts business trust, and the individual general partner of which is Thomas H. Lee. T.H. Lee Mezzanine II is controlled by Thomas H. Lee and is under common control with the Thomas H. Lee Company.

5. Mezzanine Investments II, L.P. (the "Managing General Partner") is the managing general partner of the New Funds. The Managing General Partner is a limited partnership controlled by its general partner, ML Mezzanine II Inc., which is a special purpose, indirect, wholly-owned subsidiary of Merrill Lynch & Co., Inc. The sole limited partner of the Managing General Partner is Advisors II. The Managing General Partner will be registered as an investment adviser under the Advisers Act. The limited partner of the Managing General Partner will have no authority to participate in the management of the Managing General Partner and will have no voting rights relating to the Managing General Partner.

6. The Managing General Partner will be responsible for purchasing investments for each New Fund that have been approved by the Independent General Partners, for investing and managing such Fund's temporary investments, and for the admission of additional or assignee limited partners. Each New Fund considers its relationship with the Managing General Partner to be an investment advisory relationship. Applicants believe that the partnership allocations in the Partnership Agreements and in the Managing General Partner's partnership agreement will comply with section 15 of the 1940 Act and section 205 of the Advisers Act, and are relying on a opinion of counsel to the New Funds concerning such allocations.

7. ML-Lee Acquisition Fund, L.P. ("Fund I") is a business development company whose investment adviser, Thomas H. Lee Advisors, Inc., is under common control with Advisors II. "Fund" and the "Funds" refer individually and collectively to the New Funds and Fund I.

8. The Partnership Agreements require that there be, in addition to the Managing General Partner, at least two and not more than nine Individual General Partners and that a majority of the General Partners be Independent General Partners (individuals who are not "interested persons" of such Fund within the meaning of the 1940 Act). There will initially be four Individual General Partners, all of whom will be Independent General Partners except Thomas H. Lee. The New Funds will be managed solely by their Individual General Partners, except with regard to those specific activities for which the Managing General Partner or Advisors II as investment adviser will be responsible. The Individual General Partners will provide overall guidance and supervision of Fund operations and perform the same functions as directors of a corporation. The Individual General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on the non-interested directors of a registered investment company.

9. The Partnership Agreements provide that Individual General Partners may be removed either (i) for cause by the action of two-thirds of the remaining Individual General Partners or (ii) by vote of the limited partners. The Managing General Partner may be removed either (i) by a majority of the Individual General Partners or (ii) by vote of the limited partners. The limited partners have no right to control the Fund's business, but may exercise certain rights and powers of a limited partner under the respective Partnership Agreements. Under the Partnership Agreements, limited partners are afforded all voting rights required by the 1940 Act. The Partnership Agreements also authorize limited partners to vote on certain matters. It is the opinion of counsel to the New Funds that the existence of these voting rights does not subject the limited partners to liability as general partners under the Revised Uniform Limited Partnership Act of the State of Delaware.

10. Insurance policies that would provide coverage to persons who become limited partners in the New Funds have not been obtained as of the filing date of the application because (i) the New Funds have been advised by their counsel that units in the New Fund will constitute valid limited partnership interests in the New Funds and that subscribers to the units will be limited partners of the New Funds entitled to all of the benefits of limited partnership under the Partnership Agreements and the Revised Uniform Limited Partnership Act of the State of Delaware; (ii) based upon the nature of the business to be conducted by the New Funds, the New Funds submit that the risk of liability for actions against the limited partners, including actions based upon contract or tort claims, is remote; and (iii) the Partnership Agreements will obligate the General Partners of the New Funds to take all action that may be necessary or appropriate to protect the limited liability of the limited partners. In light of the SEC staff's position that substantial insurance coverage is appropriate in the view of the special problems of using the limited partnership for registered investment companies, the New Funds will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the New Funds.

11. Applicants request that an amended order be issued determining that (i) the Independent General Partners of each New Fund will not be not "interested persons" of such New Fund, the Managing General Partner, Advisors II, or Merrill Lynch, within the meaning of section 2(a)(19) of the 1940 Act, solely by virtue of being general partners of the New Fund, and (ii) the Independent General Partners of a Fund will not be "interested persons" of such Fund solely by virtue of their service as Independent General Partners of the other two Funds.

12. Applicants believe that service by the same individuals as Independent General Partners of each of the Funds, a relationship similar to one in which an individual serves as a director of multiple investment companies in the same complex, will be beneficial to all of the Funds. The Funds have been structured so that the Independent General Partners are the functional equivalents of the disinterested directors of an incorporated registered investment company. Section 2(a)(19) excludes from the definition of "interested person" of an investment company those individuals who would be "interested persons" solely because

they are directors of the investment company. There is no equivalent exception for partners or co-partners of an investment company.

13. Applicants also request that the amended order determine that any limited partner owning less than 5% of the units of a New Fund will not be an "affiliated person" of such Fund, any other limited partner, any of the Individual General Partners, the Managing General Partner, or Advisors II, within the meaning of section 2(a)(3)(D) of the 1940 Act, merely because such limited partner is a partner of a Fund or a partner with any of such other persons in a Fund. Since such limited partners have no exclusion under the Act comparable to that provided under section 2(a)(3) to corporate shareholders with less than a 5% ownership interest, the requested relief will place investments in the New Funds on a footing more equal with investments in business development companies organized as corporations.

Applicants' Conditions: If the requested order is granted, Applicants agree to the following conditions:

1. The New Funds will be structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company registered under the 1940 Act.

2. Under the Partnership Agreements, each of the Funds are authorized to make in-kind distributions of its portfolio securities to its Partners upon liquidation of a Fund. However, each Fund agrees not to make any in-kind distributions of portfolio securities to its respective Partners until it has obtained either a "no-action" letter from the staff of the Commission confirming the Funds' interpretation of Section 205 of the Advisers Act (i.e., that unrealized gains or losses attributable to Securities distributed in-kind to Partners are properly deemed realized upon such distribution) or, in the alternative, the Funds have obtained an exemption from section 205 by a Commission order issued pursuant to section 206a of the Advisers Act, permitting the Funds to deem such gains or losses to be realized upon in-kind distributions.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19381 Filed 8-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27118; File No. SR-NASD-89-35]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Exemption From Pricing Requirement by Qualified Independent Underwriter Under Schedule E to the NASD By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1989, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the text of the proposed rule change to Schedule E of the NASD By-Laws ("Schedule E") and the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, section 1 of the NASD Rules of Fair Practice ("Corporate Financing Interpretation"). Proposed new language is italicized; proposed deletions are in brackets.

Schedule E to the NASD By-Laws

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Section 2—Definitions

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(h) Institutional Investor—an investor which comes within any of the following categories:

(1) A bank, savings and loan association, insurance company or registered investment company with total assets of at least $100,000,000;

(2) A registered investment advisor with more than $100,000,000 under management; or

(3) An entity whether natural person, corporation, partnership, trust or otherwise with total assets of at least $100,000,000.

(The remaining provisions of Section 2 are redenominated (i) through (o)).

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Section 3—Participation in Distribution of Securities of Member or Affiliate

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(c) If a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of its own or an affiliate's securities subject to this Section without limitation as to the amount of securities to be distributed by the member, one or more of the following three criteria shall be met:

(1) The price at which an equity issue or the yield at which a debt issue is to be distributed to the public is established at a price no higher or yield no lower than that recommended by a qualified independent underwriter which shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and which shall exercise the usual standards of "due diligence" in respect thereto; provided, however, that:

(i) An offering of securities by a member which has not been actively engaged in the investment banking or securities business, in its present form or as a predecessor broker/dealer, for at least the five years immediately preceding the filing of the registration statement shall be managed by a qualified independent underwriter; or

(ii) The provision of this paragraph which requires that the price of the securities be established based on the recommendation of a qualified independent underwriter shall not apply to an offering if:

a. The securities (except for the securities of a broker-dealer or its parent) are registered on behalf of selling security holders, with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, and Rule 415 adopted thereunder;

b. The securities will only be offered or sold from time to time in negotiated transactions;

c. Sales by the offiliated member will be made solely to institutional investors;

d. The qualified independent underwriter fulfills all other requirements of this paragraph with respect to the Registration Statement as of the date it is declared effective by the Securities and Exchange Commission and as of the date of any amendment thereto; or

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Interpretation of the Board of Governors—Review of Corporate Financing

Article III, section 1 of the Rules of Fair Practice [1]

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Proceeds Directed to a Member

No member shall participate in a public offering of an issuer's securities where more than 10 percent of the net offering proceeds, not including underwriting compensation, are intended to be paid to members participating in the distribution of the offering or associated or affiliated persons of such members, or members of the immediate family of such persons, unless the *offering is made in compliance with Subsection 3(c) of Schedule E to the By-Laws* [price at which an equity issuer or the yield at which a debt issue is to be distributed to the public is established at a price no higher or yield no lower than that recommended by a qualified independent underwriter as defined in

[1] The NASD is also proposing to amend the Venture Capital Restrictions provision of the Corporate Financing Interpretation to change the designation of the definition of qualified independent underwriter from section 2(l) to 2(m) of Schedule E to the By-Laws.

section 2(l) of Schedule E to the By-Laws, who shall participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and who shall exercise the usual standards of "due diligence" in respect thereto]; provided, however, this paragraph shall not apply to:

[(1) An offering of a class of equity securities for which a bona fide independent market as defined in seciton 2(c) of Schedule E to the By-Laws exists as of the date of the filing of the registration statement and as of the effective date thereof;]

[(2) An offering of a class of securities rated Baa or bette by Moody's rating service or Bbb or better by Standard & Poor's rating service or rated in a comparable category by another rating service acceptable to the Association;]

([3]*1*) An offering otherwise subject to the provisions of Schedule E to the By-Laws;

([4]*2*) An offering of securities exempt from registration with the Securities and Exchange Commission under section 3(a)(4) of the Securities Act of 1933;

([5]*3*) An offering of a real estate investment trust as defined in section 856 of the Internal Revenue Code; or

([6]*4*) An offering of securities subject to Appendix F to Article III, section 34 of the Rules of Fair Practice unless the net proceeds of such offering are intended to be paid to the above persons for the purpose of repaying loans, advances or other types of financing utilized to acquire an interest in a preexisting company.

For purposes of this paragraph, the term "net offering proceeds" means the gross offering proceeds less all expenses of issuance and distribution and the term "immediately family" has the meaning set forth in section 2(g) of Schedule E to the By-Laws.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD adopted Schedule E in 1972 to address the conflicts of interest present in a public distribution by a member of its own securities or those of an affiliate. A conflict of interest arises, *inter alia*, when the member participates in establishing the public offering price of the securities and when the member conducts due diligence with respect to the registration statement. Schedule E addresses these conflict by requiring that a member independent of the issuer, *i.e.*, a "qualified independent underwriter", participate in the preparation of the offering document, and provide an opinion that the price of an equity issue is no higher or the yield of a debt issue is no lower than it would recommend.[2]

For the past two years, a Subcommittee of the Corporate Financing Committee has studied the corporate financing activities of members in takeover transactions, corporate reorganizations, and merchant-banking transactions. The Subcommittee has reviewed numerous transactions in which members acted as financial advisors, consultants, and underwriters in connection with private placements of high-yield debt securities to a member's institutional clients. The placement of such high-yield debt securities to a member's institutional clients in a private offering permits a rapid acquisition or restructuring of the target company. In addition, member firms are often permitted to participate as a "partner" in the takeover transaction by purchasing equity securities of the company on the same terms as other insiders. In this case, the member is departing from the traditional role of financial consultant or advisor and becomes a principal in the takeover transaction.

In such transactions, the member also agrees to provide liquidity to its institutional customers, and the issuer usually grants demand registration rights to the institutional investors. The registration rights generally obligate the issuer to file a registration statement covering the securities and use its best efforts to have the registration statement declared effective within six months of the closing of the private offering. As a result, the securities become freely transferable, and the institutional investor can act as a selling security holder in the public distribution of the securities and sell or otherwise transfer the securities on a delayed or continuous basis under Rule 415.

The securities sold in offerings under Rule 415 are generally taken "off the shelf" at various times and in various amounts. When the selling security holder seeks to sell its securities, it contacts a member who will usually enter into negotiations with one or more institutional customers to purchase the securities. The market for the securities is illiquid and the sale is very much a private placement transaction.

In cases where the ownership interest of the member rises to the level of affiliation, as defined in section 2(a) of Schedule E, and the member represents that it intends to provide liquidity to its institutional customers or to execute sale transactions in the "shelf" securities on their behalf, Schedule E will apply to the offering. In other cases, compliance with section 3(c) of Schedule E may be triggered if more than 10% of the net offering proceeds are directed to a member participating in the distribution through the application of the "Proceeds Directed to Member" provision of the Corporate Financing Interpretation.

The NASD has considered the difficulty and impracticality of retaining a qualified independent underwriter to provide a recommendation with respect to the yield each time a selling security holder elects to sell debt securities "off the shelf" under Rule 415. The NASD determined that requiring a qualified independent underwriter to provide a pricing opinion was unnecessary where transactions in "high-yield" debt securities take place in negotiated, large dollar transactions between institutional investors as such investors regularly make such investments and are capable of determining a fair yield or dividend for such securities.

Therefore, the NASD is proposing to amend Section 3(c)(1) of Schedule E to provide an exemption for a qualified independent underwriter from the pricing requirement in that provision in connection with offerings registered with the SEC and distributed pursuant to Rule 415 solely to institutional investors. In order to ensure that the securities can legitimately claim the "shelf offering" exemption provided by Rule 415, new subprovision (ii) to section 3(c)(1) clarifies that the exemption is only available for securities that will only be offered or sold from time to time in negotiated transactions. Thus, the exemption is not available should securities registered pursuant to Rule 415 be sold through an underwriting syndicate. Nor is the exemption available for securities sold through an underwriting syndicate that are registered with the SEC on the same registration statement with securities that are intended to be sold "off the shelf" under Rule 415. The new exemption is also not available for offerings of securities of a broker-dealer or its parent, regardless of whether the

[2] Where the offering is of equity securities with a bona fide independent market, as defined in section 2(c) of Schedule E, or of a class of securities rated investment grade, a qualified independent underwriter is not required.

offering otherwise meets the requirements of the exemption, as the NASD believes that a pricing opinion by a qualified independent underwriter is necessary in such cases in the interest of protecting the public.

New subprovision (ii) would also require that the qualified independent underwriter participate in the preparation of the registration statement and conduct "due diligence" with respect to the offering document as of the date the offering is declared effective by the Securities and Exchange Commission and as of the date of any amendment thereto. Thus, the qualified independent underwriter would be required to perform due diligence prior to the initial effectiveness of the registration statement and when material changes have occurred such that the registration statement needs to be amended.

The term "institutional investor" is proposed to be adopted as new subsection (h) of Section 2 to Schedule E. The NASD determined to limit sales under the proposed exemption to those types of institutional investors that generally invest in such securities, utilizing significant financial criteria to ensure knowledge and sophistication regarding the price of "high-yield" bonds. The definition proposed by the NASD would make the exemption available to (1) banks, savings and loan associations, insurance companies, or registered investment companies with total assets of at least $100 million; (2) registered investment advisors with more than $100 million under management; and (3) any other entity with total assets of at least $100 million.

The proposed rule change is consistent with the provisions of section 15A(b)(2) of the Securities Exchange Act of 1934, which requires that a registered securities association enforce compliance by its members and persons associated with its members with the rules of the Association. By amending Schedule E to address the special circumstances present in an offering pursuant to Rule 415, the NASD is ensuring that its rules have a practical applicability and can be complied with.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary to appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in Notice to Members 88–98 (December, 1988). Six comment letters were received in response thereto. All of the commentators were in support of the proposed rule change, but recommended a number modifications thereto. For purposes of clarity in the following discussion, the version of the proposed rule change that was published in Notice to Members 88–98 will be referred to as the "original rule change."

The commentators were unanimous in asserting that Schedule E should not require the participation of a qualified independent underwriter throughout the life of *all* Rule 415 self-registration statements relating to securities of affiliates of NASD members and that, particularly, such participation is not appropriate for shelf-registration statements which relate only to what they describe as secondary trading transactions. The commentators indicated that they believe that the current language of the amendment creates uncertainty with regard to this matter.

The commentators stated that it was the practice for members, in the context of takeover transactions and other reorganizations, to utilize a market making prospectus in connection with secondary trading transactions in securities of the affiliate issuer in order to comply with section 5 of the Act. The NASD agrees that where a member uses a prospectus solely for the purpose of buying and selling securities of an affiliate which has previously been publicly distributed (*i.e.*, the market making prospectus) such secondary market transactions should not be subject to Schedule E. Indeed, it had not been the intention of the NASD to include such transactions within the scope of the original proposed rule change. Therefore, the NASD has determined to clarify herein that the proposed rule change is not intended to apply Schedule E to secondary market transactions in securities pursuant to a market making prospectus, registered under Rule 415, which is intended to cover securities sold by an affiliate member of the issuer in market making transactions. It is the intention of the NASD that, upon SEC approval of the proposed rule change, the SEC's release and the NASD's adopting Notice of Members will clarify that Schedule E is not applicable to such transactions.

As a result of certain of the comments regarding the scope of the original proposed rule change, the NASD also determined to modify the exemption to make it clear that an offering of securities of a member or its parent would not qualify for the exemption since all of the provisions of Schedule E, including pricing, should apply to public offerings of securities of a member of the parent of a member. The term "parent" is defined in Schedule E as any entity affiliated with a member, from which member the entity derives 50% or more of its gross revenues or in which it employs 50% or more of its assets.

The original proposed rule change required that the qualified independent underwriter participate in the preparation of the registration statement and prospectus and conduct due diligence "on a continuous basis throughout the effectiveness of the registration statement." The commentators asserted that the requirement for a qualified independent underwriter to conduct continuous due diligence for an indefinite period of time would create unacceptable uncertainties with regard to liability, unreasonably high transaction costs and impose serious admininistrative burdens. The commentators argued that any requirement to conduct appropriate due diligence should terminate with the original effectiveness of the registration statement. They asserted that the possiblity that the member will limit adverse disclosure to enhance capital raising is not present after the intitial affectiveness of the registration statement and, as a result, the qualified independent underwriter's participation in the preparation of the initial registration statement should largely address any subsequent due diligence concerns. The commentators also urged that the member-affiliate had a strong incentive to perform its own due diligence responsibilities carefully because the prospectus, when used in the context of secondary trading, does not limit the member's potential liability under federal or state securities laws. The NASD reviewed these comments and determined that in those cases where the issuers have recently undergone leveraged buy-outs that such issuers would most likely undergo major corporate restructuring during the life of the registration statement (*e.g.*, the sale or disposition of assets, and the selling or spinning off of operating divisions) and, as a result, the NASD believes that the qualified independent underwriter should be required to periodically update its due diligence. Therefore, in response to the above comments, the

NASD determined to modify the original proposed rule change to require that due diligence be performed as of the effective date of the registration statement and with respect to any amendment to the registration statement. This would require due diligence to be performed prior to the initial effectiveness of the registration statement and when material changes have occurred requiring an amendment thereto.

The original proposed rule change proposed a definition of "institutional investor" that did not have any net asset test with respect to banks, savings and loan associations, insurance companies or registered investment companies. Further, the original proposed rule change would have required that any entity which meets the $100 million gross asset test also demonstrate that the entity regularly makes investments in securities similar to the securities being offered. The commentators suggested that the definition be modified to: (1) More closely conform the definition to that of the definition of "institutional buyer" found in proposed SEC Rule 144A, and the definition of "accredited investor" found in Rule 501(a) of Regulation D; (2) modify the asset test of any entity meeting the definition for "gross assets" to "Total assets"; and (3) delete the requirement that the entity demonstrate that it regularly invests in the type of high yield securities being purchased.

The Committee reviewed the comments recommending that the definition of institutional investor be broadened to include a number of additional types of entities. The Committee determined to maintain the minimum $100 million threshold and that such other entities need not be specifically set forth as they can qualify under $100 million dollar entity category.

The NASD determined to accept the recommendation of the commentators to modify the asset test required of any entity meeting the definition from "gross assets" to "total assets" and deleted the requirement that the entity demonstrate that it regularly invests in the type of high yield securities being purchased. The NASD agrees that most statutory concepts found in federal or state securities law involving institutional investors and institutional sales do not contain an experience requirement.

In its review of the original proposed rule change, the NASD also determined to add a requirement that banks, savings and loan associations, insurance companies or registered investment companies seeking to qualify under the institutional investor definition have total assets of more than $100 million.

One of the commentators suggested that the exception should be modified to permit a certain number of sales to noninstitutional investors. The commentators argued that the noninstitutional investors who could purchase from the affiliated member under the exemption would receive the benefit of the pricing discipline imposed by the institutional investors. It was recommended that the original proposed rule change be modified to require sales aggregating 85% of the aggregate dollar amount of the securities being offered will be sold to institutional investors. The NASD reviewed the comment and determined that it would undermine the purpose of the proposed amendment to permit sales of high yield debt securities by an affiliate of the issuer to persons who did not meet the definition of institutional investor in an amount of up to 15% of the aggregate dollar amount of the securities being offered.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19378 Filed 8-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27107; File No. SR-NYSE-89-19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to Time Records of Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 25, 1989, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes consist of amendments to NYSE Rules 121 and 123 to ensure that records be maintained as to the time an order is received by a specialist at the post, or is received at a member's booth on the Floor from off the Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

Purpose—The purpose of the proposed rule changes is to further enhance market surveillance procedures

and to assist the Exchange in the reconstruction of market activity by providing the Exchange with the ability to pinpoint the time that each order is received by a specialist or is received at a membrer's booth on the Floor from off the Floor.

Rule 121

Currently, Rule 121 requires specialists to keep records of all orders placed with them and of all executions, modifications and cancellations of such orders for at least three (3) years. The rule does not currently contain a time-recording requirement. Rule 123A.30 requires that all percentage orders received by a specialist be time-recorded at the post location. Additionally, as a matter of procedure, all orders directed to a specialist via SuperDot have a time record. Therefore, the only orders directed to a specialist that do not have a time record are non-systematized, non-percentage orders. The proposed amendments to Rule 121 would require that all orders be time recorded. The amendments to Rule 121 would also require that the specialist's records of orders and modifications or cancellations of orders include the name and the amount of the security and the terms of the order, modification or cancellation.

Rule 123

At the present time, there are no requirements that members time-record orders received on the Floor from off the floor. The amendments to Rule 123 will require that every member preserve a record, for at least 3 years, of every order received by the member on the Floor from off the Floor. The record would have to indicate the name and the amount of the security, the terms of the order and the time when the order was received on the Floor.

Statutory Basis

The basis under the Act for these proposed rule changes is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The amendments to Rules 121 and 123 are consistent with these objectives in that they enhance the exchange's ability to reconstruct market activity as it occurred on the trading Floor and they foster uniformity in trading data which aids in NYSE surveillance programs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Exchange has neither solicited nor recieved written comments regarding these proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making writen submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washingon, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washingon, DC 20549.

Copies of such filing wil also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 8, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-19379 Filed 8-16-89; 8:45 am]

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[Rel. No. 34-27124; File No. SR-NYSE-89-18]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. to Permit the Earlier Redemption of Due-Bills that Represent Large Cash Dividends.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 25, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has expanded the interpretation of Rule 259 to enable due-bills [2] that represent large cash dividends (25 percent of market price) to be redeemed within fewer than five days.

The text of the proposed rule change is available at the Commission and the principle office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, as set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] Exchange Rule 255 provides that the term "due-bill," as used in the Rules, means "an assignment or other instrument employed for the purpose of evidencing the transfer of title to any dividend, interest, or rights pertaining to securities contracted for, or evidencing the obligation of a seller to deliver such dividend, interest or rights to a subsequent owner."

sections A, B, and C below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Exchange Rule 259 presently permits due-bills to be redeemed "on a date set by the Exchange." Exchange policy has been to require the redemption of due-bills five (5) business days following the payment of a dividend or a distribution.

Due-bills are utilized in order to correctly assign a particular dividend or distribution to the buyer in a transaction that would settle after the appropriate record date. For the majority of trades (not requiring physical delivery), this method of transferring ownership is accomplished through the Depository Trust Company ("DTC"). If the due-bills represent stock (as in a split-up), the redemption (furnish monies owed or securities owed) is done five days after the payable date. This redemption covers the entire due-bill trading period. Should the due-bill represent a large cash dividend, DTC "nets" due-bill trading through to the payable date. However, for those trades that settle on and after the payable date, redemption of due-bills presently must be done "outside" the system, or, on a "broker to broker" basis. Handling the due-bills and payment outside of DTC has been burdensome to Participants of DTC. As the Exchange has historically set the due-bill redemption date five business days following the pay date, member organizations redeem due-bills for the five days of trading on that date.

Problems have been incurred as a result of the significant special cash dividends that have been paid by issuers recently. Because of the amount of some cash dividends ($40 per share in a recent case) and the obvious desirability for cash, member organizations have requested a daily reconciling of due-bills for this five-day period. Member organizations have stated that they had extremely large amounts of funds tied up in due-bills for the above mentioned five-day period. As a solution to the problem, DTC has recently developed a new system that will accomplish a "daily" redemption of crediting and debiting member organizations with the value of the dividend for each day for the last five days of trading. Accordingly, the Exchange proposes to permit the redemption of due-bills within five business days following the payment of a dividend or a distribution.

(2) Basis

The statutory basis for the Proposed Rule Change is section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The revision in interpretation of the Exchange's Rule 259 should promote the economical and efficient clearing and settling of securities. The dividends affected would be more expediently credited/debited to the appropriate firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act in that it is designated as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submission should refer to File No. SR–NYSE–89–18 and should be submitted by September 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–19380 Filed 8–16–89; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0210]

Norwest Equity Partners IV; Issuance of a Small Business Investment Company License

On November 16, 1988, a notice was published in the **Federal Register** (53 FR 46734) stating that an application had been filed by Norwest Venture Partner—II (name changed to Norwest Equity Partners IV), 2800 Piper Jaffray Tower, Minneapolis, Minnesota 55402, with the Small Business Administration (SBA), pursuant to § 107.103 of the Regulations governing small business investment companies (13 CFR 107.103 (1988)), for a license to operate as a small business investment company.

Interested parties were given until the close of business December 15, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information. SBA issued License No. 05/05–0210 on August 2, 1989, to Norwest Equity Partners IV to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 11, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-19354 Filed 8-16-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 12 at 9:30 a.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The agenda for this meeting will include (1) the establishment of U.S. positions, and announcement of candidates for delegations to upcoming meetings of CCITT Study Group II and III, (2) report of Ad hoc group for leased circuit Recommendations, and review of any proposed delayed documents for Study Group II and III.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone 647 5220. All attendees must use the C Street entrance to the building.

Dated: August 1, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89-19341 Filed 8-16-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 22; Notice 89-14]

Standard Time Zone Boundaries; Operating Exception for the Burlington Northern Railroad

AGENCY: Office of the Secretary, DOT.

ACTION: Removal of operating exception.

SUMMARY: The Burlington Northern Railroad was granted an exception from the standard time zones created by Congress to permit operation under mountain time from Texline to Amarillo, Texas, despite the fact that the area is in the central time zone. The exception is no longer needed because of computerization within the railroad dispatching office. This notice removes the exception.

EFFECTIVE DATE: October 29, 1989.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel (C-50), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-9306.

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260-64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. He also has authority (delegated to the General Counsel) to grant to a railroad an exception from the time zones to permit for internal purposes only operation of a railroad line on one time, despite the fact that it crosses a time zone boundary. When there is less confusion, railroad operations are less hazardous and more efficient.

The request. In 1987, the Burlington Northern Railroad Company requested, and was granted, an operating exception permitting internal operation of its line between Pueblo, Colorado and Amarillo, Texas, on mountain time. This railroad line is bisected by the time zone boundary between central and mountain time at Texline, Texas. Control of trains on this line was in a single dispatching territory and under the control of one dispatching office, which was located in the mountain time zone. The railroad stated that because of the time zone change, its personnel were experiencing confusion in understanding and implementing train orders. It alleged that misunderstanding of the times that orders and directives were to be observed could lead to dangerous operating and working conditions. In response, the Department's General Counsel granted an operational exception that moved the operational time zone boundary eastward to Amarillo, Texas, which was the division point between Burlington Northern's Colorado and Fort Worth Division, and the boundary between dispatching districts.

In a letter dated August 2, 1989, Burlington Northern Railroad requested authority to change the existing operating time zone boundary to return to Central Time between Amarillo, Texas and Texline, Texas to conform with the standard time zone boundaries. Since the exception was granted, the railroad has implemented a "Computerized Track Warrant Control" in the McCook train dispatcher's office. As a result, the train dispatcher's job does not now involve dispatching trains by time of day. The requested change would put the operation of trains on this track back in conformance with standard time zone boundaries. Amtrak trains do not operate on this line and the railroad states that the change would have no effect on the general public. The railroad asked that the change be effective on October 29, 1989, to coincide with publication of its timetable.

Decision. Because the operating exception is no longer necessary, it is removed effective October 29, 1989.

Authority: Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-64; 49 CFR 1.57(b).

Issued in Washington, DC, on August 11, 1989.

Phillip D. Brady,

General Counsel.

[FR Doc. 89-19271 Filed 8-16-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Franklin and Vance Counties, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advice the public for a proposed highway project between the cities of Franklinton and Henderson, North Carolina.

FOR FURTHER INFORMATION CONTACT: Robert L. Lee, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790-2856.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an Environmental Impact Statement (EIS) for the improvement of the US-1 Corridor between Franklinton and Henderson. The proposed action would be the construction of a multi-lane highway, potentially on a new location from US-1A in Franklinton to US-1 Business

south of Henderson, a distance of about 13.4 miles. The NCDOT Transportation Improvement Program 1988–1989 includes this project as part of the Strategic Corridor linking Raleigh and Henderson. Improvements to the corridor are considered necessary to increase safety and traffic service.

Alternatives under consideration include: (1) The "no-build", (2) improving existing facilities, and (3) partial relocation.

Solicitation of comments on the proposed action are being sent to appropriate Federal, State and local agencies. A complete public involvement program has been developed for the project to include public meetings and a public hearing to be held in the study area. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program).

Robert L. Lee,

District Engineer Raleigh, North Carolina.

[FR Doc. 89–19336 Filed 8–16–89; 8:45 am]

BILLING CODE 4910-22-M

Office of Hearings

[Docket 46438]

U.S.-Japan Service Case; Assignment of Proceeding

Served: August 11, 1989.

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M–50, Room 9228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 89–19272 Filed 8–16–89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

Date: August 11, 1989.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0998.
Form Number: 8615.
Type of Review: Resubmission.
Title: Computation of Tax for Children Under Age 14 Who Have Investment Income of More Than $1,000.
Description: Under section 1 (i), children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, is so, to figure the child's tax on his or her unearned income and earned income, if any.
Respondents: Individuals or households.
Estimated Number of Respondents: 500,000.
Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	13 minutes.
Learning about the law or the form	11 minutes.
Preparing the form	37 minutes.
Copying, assembling, and sending the form to IRS	17 minutes.

Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 655,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–19342 Filed 8–16–89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted the Office of Management and Budget for Review

Date: August 11, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0236.
Form Number: 11–C.
Type of Review: Revision.
Title: Stamp Tax Registration Return for Wagering.
Description: Form 11–C is used to register persons accepting wagers (Internal Revenue Code section 4412). IRS uses this form to register the respondent, collect the annual stamp tax (Internal Revenue Code section 4412) and to verify that the tax on wagers is reported on Form 730.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 3,500.
Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	7 hours, 10 minutes.
Learning about the law or the form	2 hours, 2 minutes.
Preparing the form	4 hours, 5 minutes.

Copying, assembling, and sending the form to IRS	32 minutes.

Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 48,405 hours.
OMB Number: 1545–1007.
Form Number: 8606.
Type of Review: Revision.
Title: Nondeductible IRA Contributions, IRA Basis, and Nontaxable IRA Distributions.

Description: Internal Revenue Code section 408(o) allows taxpayers to elect to make nondeductible contributions to individual retirement plans. This section also requires taxpayers to report to the Service certain information regarding nondeductible contributions.
Respondents: Individuals or households.
Estimated Number of Respondents: 997,748.
Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	26 minutes.
Learning about the law or the form	7 minutes.
Preparing the form	22 minutes.
Copying, assembling, and sending the form to IRS	20 minutes.

Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 1,267,140 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 89–19343 Filed 8–16–89; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 158
Thursday, August 17, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 22, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 24, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Regulations: 11 CFR parts 4 and 5—Notice of Proposed Rulemaking
FY 1991 Budget Request
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89–19452 Filed 8–15–89; 10:58 am]
BILLING CODE 6715-01-M

LEGAL SERVICES CORPORATION

Committee on the Provision for the Delivery of Legal Services Meeting

TIME AND DATE: The meeting will take place on Thursday, August 24, 1989, from 9:00 a.m. until 6:00 p.m. and continue on Friday, August 25, 1989, from 9:00 a.m. until 12:00 p.m., or until all official business has been completed.

PLACE: Washington Marriott Hotel, Dupont Ballroom, 1221 22nd Street NW., Washington, DC 20037.

STATUS OF MEETING: Open. All persons wishing to address the Legal Services Corporation Board of Directors at its public meetings must register with the Secretary of the Corporation, Maureen R. Bozell. Other members of the public may address a meeting of the Board upon invitation of the Chairman of the meeting.

MATTER TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes June 12–13, 1989
3. Consideration of Competition for Federal Legal Services Grants:
   Discussion Topics to Include:
   —Competition Models Used by Selected Federal Agencies:
   —Requirements for a Solicitation for a Legal Services Grant;
   —Issues Presented at the June 12–13, 1989, Meeting in Schaumburg, IL: and
   —Presentation by Douglas J. Besharov, of the American Enterprise Institute.
4. Public comment.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: August 15, 1989.

Maureen R. Bozell,
Corporation Secretary.

[FR Doc. 89–19531 Filed 8–15–89; 3:36 pm]
BILLING CODE 7050-01-M

federal register

Thursday
August 17, 1989

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Fluid Catalytic Cracking Unit Regenerators; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3104-8]

RIN 2060-AA36

Standards of Performance for New Stationary Sources; Fluid Catalytic Cracking Unit Regenerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance to limit sulfur oxide (SO_x) emissions from new, modified, and reconstructed fluid catalytic cracking unit (FCCU) regenerators were proposed in the **Federal Register** on January 17, 1984 (49 FR 2058). Revisions to the proposed standards were proposed in the **Federal Register** on November 8, 1985 (50 FR 46464). This action promulgates these standards of performance for FCCU regenerators. These standards implement section 111 of the Clean Air Act and are based on the Administrator's determination that emissions from petroleum refineries cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed FCCU regenerators to achieve emission levels that reflect the best demonstrated system of continuous emission reduction considering costs, non-air quality health, and environmental and energy impacts. The standards define an FCCU to include fluidized bed treatment processes requiring the continuous regeneration of catalyst or contact materials by burning off coke and other deposits. New, modified, and reconstructed process units fitting this definition would be required to achieve the FCCU carbon monoxide (CO), particulate, and opacity standards in 40 CFR part 60, subpart J, as well as the SO_x standards promulgated today.

DATES: This regulation is effective August 17, 1989.

These standards of performance become effective upon publication but apply to affected facilities for which construction, modification, or reconstruction commenced after January 17, 1984. Any FCCU that was constructed, modified, or reconstructed on or before January 17, 1984 to use a contact material for removing impurities from feedstock (rather than a catalyst for cracking feedstock) is not retroactively subject to the FCCU standards for particulate, opacity, and CO emissions.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the **Federal Register** as of August 17, 1989.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Sulfur Oxides Emissions from Fluid Catalytic Cracking Unit Regenerators—Background Information for Promulgated Standards of Performance" (EPA–450/3–82–013b). The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's responses to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. A docket, number A–79–09, containing information considered by EPA in the development of the promulgated standards, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket (LE–131), Room M–1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information and official interpretations of applicability, compliance requirements, and reporting aspects of the promulgated standard, contact the appropriate Regional, State, or local office contact as listed in 40 CFR 60.4. For further information on the background of the regulatory decisions in the promulgated standard, contact Ms. Gail Lacy, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5261. For further information on the technical aspects of the promulgated standards, contact Mr. Dave Markwordt, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0837. For further information on the testing and monitoring requirements of the promulgated standards, contact Mr. Terry Harrison, Emission Measurement Branch, Technical Support Division (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5233.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

As prescribed by section 111, promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 38 FR 15380 dated June 11, 1973) that petroleum refineries contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

The promulgated standards limit SO_x emissions from new, modified, and reconstructed affected facilities. For the purpose of these standards, the affected facility is identified as the FCCU regenerator (or regenerators where an FCCU has multiple regenerators) and air blower. The definition of FCCU in the standards includes units that can process residual feedstocks. These units are commonly referred to as heavy oil cracking (HOC) units and include reduced crude conversion (RCC) units. The definition also includes other process units such as asphalt residual treatment (ART) units that are similar to an FCCU in equipment configuration, operation, and emissions. An ART unit circulates and regenerates a contact material for removing feedstock impurities, including sulfur. Such units constructed, modified, or reconstructed after January 17, 1984, are subject to these standards and to the FCCU

standards in 40 CFR part 60 subpart J for particulate matter, CO, and visible emissions.

A refiner can choose from several alternatives to achieve the standards. Each of these alternatives is discussed below.

The standard for FCCU's with add-on controls is applicable if a refiner chooses to use an add-on control device, such as a scrubber. This standard requires that sulfur dioxide (SO_2) emissions from the FCCU regenerator must be reduced by at least 90 percent, or that the SO_2 emissions to the atmosphere must be no greater than 50 parts per million by volume (vppm) whichever is less stringent. The standard for FCCU's with add-on controls now requires determination of compliance on a daily basis, rather than using excess emissions to identify the need for a compliance test. Use of continuous SO_2 monitors, located at the control device inlet and outlet, is required to determine on a continual basis the compliance status of the facility. Only a continuous monitor at the outlet of the control device is required if the owner or operator seeks to comply specifically with only the 50 vppm standard. Because SO_2 monitors are now used for compliance determinations, they are subject to 40 CFR part 60 appendix F, "Quality Assurance Procedures, Procedure 1—Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determinations." The compliance averaging time has changed since proposal from 3 hours to a rolling 7-day average. Minimum data requirements have now been incorporated. The minimum data requirements require 22 valid days of data out of every 30 successive, rolling calendar days. A valid day of data consists of a minimum of 18 valid hours of data, where a valid hour of data consists of at least 2 valid data points. If the continuous emission monitoring system (CEMS) does not collect enough data to meet the minimum data requirement, then other means, such as manual test Methods 6B or 8, or another CEMS must be used to obtain sufficient data to meet the minimum data requirements.

The standard for FCCU's without add-on controls requires that a refiner limit SO_x emissions to the atmosphere from an FCCU to a level less than or equal to 9.8 kilograms (kg)/1,000 kg coke burn-off without the use of an add-on control device. Examples of SO_x control techniques that could be used to achieve this standard include SO_x reduction catalysts and feed hydrotreating. Like the standard for FCCU's with add-on controls, the standard for FCCU's without add-on controls now requires daily compliance determinations. Compliance with the standard is determined by manual stack sampling using EPA Reference Method 1 for sample and velocity traverses, Method 2 calculation procedures for velocity and volumetric flowrate, Method 3 for gas analysis, and Method 8 for determining the SO_x content of the stack gases. The compliance averaging time has also changed since proposal from 3 hours to 7 days, so that daily compliance determinations are made on the basis of a 7-day rolling average. One 3-hour Method 8 test is required each day. Alternative methods may be approved on a case-by-case basis if sufficient data are obtained to show that the data can be used for making compliance determinations on a daily basis.

The feed sulfur cutoff states that FCCU's processing feedstocks with sulfur contents less than or equal to 0.30 percent by weight, averaged over a rolling 7-day period, are exempt from both the standard for FCCU's with add-on controls and the standard for FCCU's without add-on controls. Refiners can use low sulfur feedstocks or hydrotreating to meet this limit. Compliance with the feed sulfur cutoff is determined by sampling the fresh feedstock to the FCCU and determining its sulfur content using American Society for Testing and Materials (ASTM) analytical test methods ASTM D129–64 (Reapproved 1978), ASTM D1552–83, ASTM D2622–87, or ASTM D1266–87. The results are reported as a 7-day rolling average. This represents a change since proposal, when results were reported as a 7-day calendar average. One sample is required per 8-hour period.

Each 7-day period during which the owner or operator does not meet the applicable standards is a violation of that standard. For example, if an owner or operator seeks to comply with the feed sulfur cutoff, each 7-day period for which the average feed sulfur level exceeds 0.30 weight percent is a violation of the standard. Failure to meet the minimum data requirements (that is, 22 valid days of data out of 30 days) during any rolling 30-day period of successive calendar days for the standards for FCCU's with add-on controls is also considered a violation of the standards.

Quarterly reporting is required for all periods in which a violation occurs. These reports include information on any 7-day period during which a violation of the standard has occurred and any 30-day period during which the minimum data requirements have not been met. This information includes the date the violation occurred; an explanation for the violation; whether the violation was concurrent with startup, shutdown, or malfunction of the FCCU or control system; and a description of the corrective action taken, if any. If no violations occur during a quarter, then a semiannual report may be submitted. However, if an owner or operator elects to comply with an alternative standard, a quarterly report must be submitted to the Administrator in the quarter following such a change even if no violations of a standard have occurred. Whether or not a violation has occurred, for any single calendar day in which 18 valid hours of CEMS data, a Method 8 test result, or 3 test results for feed sulfur content were not obtained as required by these standards, the dates for and brief explanations as to why such data were not obtained shall still be included in the quarterly (or semiannual) report. Records of continuous monitoring data and calibrations, supplemental sampling test results, Method 8 test results, feed sulfur test results, and each 7-day average compliance determination must be maintained by the owner or operator of the affected facility and be available for inspection by EPA for 2 years. In addition, the standards require refiners to submit notification and compliance reports in accordance with the General Provisions (40 CFR part 60, subpart A).

The promulgated standards would also amend the standards in Subpart J for fuel gas combustion devices by deleting an incorrect duplication of the definition of excess emissions of SO_2, i.e., deleting 40 CFR 60.105(e)(4).

II. Environmental Impacts

The promulgated standards are based on the application of BDT to control FCCU SO_x emissions. The EPA determined, considering costs, environmental, energy, and non-air quality health impacts that scrubbers effectively control FCCU SO_x emissions and are BDT. However, refiners may also use SO_x reduction catalysts, naturally occurring low sulfur FCCU feedstocks, or hydrotreated FCCU feedstocks to meet these standards.

To estimate the impacts of the promulgated standards, EPA projected that 17 newly constructed, modified, and reconstructed FCCU regenerators would be affected by the standards during the first 5 years after the effective date of the standards. Assuming that scrubbing systems are used at all affected facilities processing feedstocks containing greater

than 0.30 weight percent sulfur, EPA estimates that the promulgated standards would reduce fifth year nationwide SO_x emissions by about 69,000 megagrams per year (Mg/yr). If, instead, these same facilities processing feeds greater than 0.30 weight percent sulfur elected to comply with the standard for FCCU's without add-on controls, fifth year nationwide SO_x emissions would be reduced by about 63,000 Mg/yr.

Application of sodium-based scrubbers to control SO_x emissions from the affected facilities would increase fifth year nationwide wastewater discharges by about 2.2×10^6 cubic meters per year (m^3/yr). Wastewater from sodium-based scrubbers designed to control both particulates and SO_x emissions from FCCU's is treated to reduce collected particulates and chemical oxygen demand. The treated discharge from these scrubbers would contain about 90 Mg/yr of suspended solids and chemical oxygen demand, and about 110 gigagrams per year (Gg/yr) of total dissolved solids in the fifth year of the standards. The discharge from sodium-based scrubbers designed to control only SO_x would not produce significant quantities of solid wastes.

The sodium scrubbers that are currently applied to FCCU's control both particulate emissions as well as SO_x emissions. With this type of scrubber, an additional particulate control device would not be required to achieve the current FCCU particulate standard. Control of FCCU particulate emissions (primarily catalyst fines) by a sodium scrubber does not incrementally increase the dry weight of solid wastes over control by a dry particulate control device, such as an electrostatic precipitator (ESP). Therefore, the amount of particulates collected by the sodium scrubbers are not "chargeable" to the SO_x standards. However, particulates collected in a scrubber would be wet, and thus, weigh more and encompass a larger volume. The increase due to the amount of water added to the solids is "chargeable" to the SO_x standards. The fifth year nationwide incremental increase in solid wastes produced by application of sodium scrubbers is estimated to be about 14 Gg/yr.

At refinery locations where the disposal of a treated wastestream from a sodium scrubber is not permitted, a refiner would need to use other SO_x control techniques with minimal wastewater impacts. Alternative scrubbing systems include dual alkali or spray drying scrubbing systems, which produce no significant liquid wastes but instead produce solid wastes. Other alternatives are Wellman-Lord or citrate scrubbing systems, which produce no significant liquid wastes but instead produce a salable sulfur product. If dual alkali scrubbers are used to control SO_x emissions from all affected facilities with feed sulfur levels above 0.30 percent, solid wastes would increase over baseline by 325 Gg/yr in the fifth year.

The use of SO_x reduction catalysts may increase FCCU particulate emissions, and hence, increase solid wastes collected by the particulate control device. It is difficult to approximate this increase, however, because the catalyst technology is still in the developmental stages. It is unlikely that the use of SO_x reduction catalysts would significantly increase FCCU solid waste impacts over current levels. Wastewater discharges would not increase with the use of SO_x reduction catalysts.

III. Energy Impacts

The promulgated standards would have a small impact on nationwide energy consumption. Sodium scrubbers would increase FCCU energy consumption for new, modified, and reconstructed FCCU's by about 0.2 to 2.0 percent, depending on the regeneration mode of the FCCU and type of venturi scrubber used. Other scrubbing systems, particularly regenerable systems such as Wellman-Lord and citrate scrubbers, would have a greater energy impact. However, EPA expects few refiners to use regenerable scrubbing systems. No energy increase is expected from use of SO_x reduction catalysts.

IV. Cost Impacts

The costs for these standards have changed somewhat since proposal. Costs were revised to account for inflation and to better reflect the cost of retrofitting scrubbers at existing refineries. The EPA estimates that if sodium-based scrubbers are used at all affected facilities with feed sulfur levels above 0.30 percent by weight, the promulgated standards would result in a 5-year total nationwide capital cost of $117 million and an annual cost of $45 million (reported in fourth quarter 1984 dollars) in the fifth year after the effective date of the standards. Units processing feeds with sulfur contents of 0.30 percent by weight would be below the feed sulfur cutoff and, therefore, not need to install a scrubber. Where sodium scrubbers are not applicable, dual alkali scrubbers could be used at a similar cost to sodium scrubbers. If all affected facilities used SO_x reduction catalysts, SO_x emissions control would cost about $20 million to $50 million in the fifth year of the standards. SO_x reduction catalyst costs are presented as a range because the technology is under development. The upper end of the range represents a catalyst formulation that is the earlier stages of development; the developer of this catalyst expects the cost to decrease as the catalyst formulation is produced in greater quantities.

The cost of SO_x control, if all affected facilities with feed sulfur levels greater than 0.30 weight percent used scrubbers, would be approximately $660/Mg of SO_x removed. Based on catalyst developer claims of SO_x reduction catalyst performance and cost, SO_x reduction catalysts, when used at those affected facilities with feed sulfur levels greater than 0.30 weight percent but less than or equal to 1.5 weight percent, are estimated to cost from $320 to $850/Mg of SO_x removed. Affected facilities processing feeds containing greater than 1.5 weight percent sulfur would likely use scrubbers. These affected facilities would incur a cost of less than $660/Mg of SO_x removed.

The cost of scrubbing for FCCU's processing feeds containing slightly greater than 0.30 weight percent sulfur would be approximately $1,900/Mg of SO_x removed. However, EPA does not expect refiners processing feeds with sulfur contents slightly greater than 0.30 weight percent actually to incur a cost of $1,900 to remove each megagram of SO_x emissions. This is because these refiners are the ones most likely to use SO_x reduction catalysts rather than install a scrubber.

V. Economic Impact

The economic impact of the standards will be small even if all affected facilities use flue gas scrubbers. The price increases presented in the proposal BID were all less than 0.4 percent. Using the revised control costs and second quarter 1984 product prices, that figure increases to approximately 0.8 percent in the worst case. Even without passing through price increases, the standards are not expected to reduce the profitability of FCCU operations to the point where planned investments would be postponed. The EPA does not consider these percentages sufficiently high to deter a decision to install an FCCU that is otherwise economically justified.

The environmental, energy, and economic impacts are discussed in greater detail in the BID for the proposed standards, "Sulfur Oxides Emissions from Fluid Catalytic Cracking Unit Regenerators—Background

Information for Proposed Standards," EPA–450/3–82–013a.

VI. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (46 FR 55000, November 5, 1981) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards for FCCU regenerators recommended for proposal. This meeting was held on December 1, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

The proposed standards were published in the **Federal Register** on January 17, 1984 (49 FR 2058). The preamble to the proposed standards described the availability of the BID, "Sulfur Oxides Emissions from Fluid Catalytic Cracking Unit Regenerators—Background Information for Proposed Standards," EPA–450/3–82–013a, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and copies of the proposal BID were distributed to interested parties. The Agency published a revised proposal in the **Federal Register** on November 8, 1985 (50 FR 46464). Public comments on the revised proposal were solicited at the time of their proposal and copies of the revised proposal were distributed to interested parties.

The public was also given the opportunity for oral presentation of data, views, or arguments concerning the proposed standards in accordance with section 307(d)(5) of the Clean Air Act. No one requested a public hearing, so a public hearing was not held.

The original public comment period was from January 17 to April 3, 1984. This comment period was reopened on November 8, 1985, and extended through December 9, 1985, in order to allow interested parties to comment specifically on the proposed revisions. A total of 30 comment letters were received. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

VII. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, State and local air pollution control agencies, trade associations, a private individual, and the Office of Management and Budget (OMB). A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: The Standards, Control Technologies and Economic Impacts, Compliance Testing and Monitoring, Compliance, and Modification/ Reconstruction.

The Standards

Applicability

Comment (Regulated Pollutant): In the revised proposed standards (50 FR 46464), the Agency proposed to change the regulated pollutant from SO_x to SO_2 for the standard with add-on controls, but keep SO_x as the regulated pollutant for the standard without add-on controls. Comments were received only on SO_x as the regulated pollutant for the standard without add-on controls.

Several commenters suggested that EPA use SO_2 rather than SO_x as the regulated pollutant for the standard for SO_x reduction catalysts. Among the arguments presented by the commenters were that: (1) Emerging SO_x reduction catalyst data indicate that sulfur trioxide (SO_3) is unaffected by the catalysts; (2) preliminary data previously submitted to EPA from several SO_x reduction catalyst trials at one of their refineries generally indicate only an insignificant amount of SO_3 in the SO_x emissions; (3) using SO_2 as the regulated pollutant enables the same monitoring technique (proven SO_2 monitors) to be used as for add-on scrubber technology, resulting in cost savings and sample consistency and reliability; and (4) other refinery sources are only regulated for SO_2 and EPA usually regulates only SO_2.

Response: The Agency has considered the arguments presented by the commenters and reviewed the data available on the composition of SO_x when using SO_x reduction catalysts. After this review, the Agency still believes that the most appropriate regulated pollutant for SO_x reduction catalysts is SO_x, not SO_2.

The Agency recontacted SO_x reduction catalyst vendors to review the mechanism by which SO_x reduction catalysts reduce total SO_x emissions. The SO_x reduction catalyst vendors indicate that SO_x reduction catalysts preferentially remove SO_3, forming a metal sulfate compound that is much more stable than the metal sulfite compound formed when the SO_2 reacts with the catalyst. As the SO_x reduction catalyst picks up more and more SO_3, the equilibrium balance is disturbed. To regain equilibrium, more SO_2 becomes SO_3. If the rate of SO_2 to SO_3 is less than the rate of metal sulfate formation (SO_3 plus metal oxide), then the SO_3 percentage in the FCCU emissions will decrease. If the SO_2 to SO_3 rate is faster than the metal sulfate formation rate, then the ratio of SO_2 to SO_3 will remain the same. In order for the percentage of SO_3 to increase, other operating parameters of the regenerator would have to change in order to change the thermodynamic equilibrium. To ensure maximum SO_x removal efficiency, the owner or operator would likely operate a regenerator, to the extent possible, in such a manner that the SO_2 to SO_3 rate is not limiting; that is, create conditions within the regenerator that increase the SO_3 percentage.

The Agency again reviewed the data on the SO_2/SO_3 ratio in regenerator emissions, including that most recently submitted by several commenters. The Agency requested in the revised proposal that any data that were available on this be submitted. Very little data were submitted. The data base, therefore, remains very limited and inconclusive. The more recent data generally tend to have a lower percentage of SO_3 than the earlier data. Some of the recent data still suggest, however, that there is a potential for large amounts of SO_3 to be emitted, which would be undetected by a standard using SO_2 as the regulated pollutant. Thus, regulating SO_2 only will not necessarily reflect the potential control of SO_x that can be obtained by SO_x reduction catalysts.

The Agency requested, but did not receive, data on the possibility that the plume opacity standard for FCCU's may help limit the emissions of SO_3. Plume opacity is affected by the condensation of SO_3 and, to the extent this condensation affects the ability of a source to comply with the opacity standard, it may also help limit the emissions of SO_3. If sufficient data had been presented, the Agency would have considered changing the regulated pollutant for FCCU's without add-on controls from SO_x to SO_2 so that SO_2 CEMS's could be used for compliance determinations.

The arguments relating to the advantages of SO_2 monitoring are outweighed by the need for an SO_x standard for the reasons described above. The fact that other refinery

sources are only regulated for SO_2 sheds no light on whether an SO_x standard is appropriate for this source.

Comment (Affected Facility): Several commenters stated that the designation of the affected facility should be broadened to include the entire FCCU, and that the definition of "fresh feed" should be clarified.

Response: At proposal, the affected facility was designated as each individual FCCU regenerator and air blower. The rationale for this selection of the affected facility was presented in the preamble to the proposed standards (49 FR 2060). As stated in the preamble, SO_x are generated in and emitted from the FCCU regenerator. The designation of the regenerator of each FCCU as the affected facility, rather than the entire FCCU, would lead to bringing replacement equipment under these standards sooner and thus, would adhere to the purpose of section 111 of the Clean Air Act.

The EPA anticipates that few, if any, FCCU's utilizing multiple regenerators will become subject to these standards over the next 5 years. However, identifying each FCCU regenerator as the affected facility for multiple regenerator configurations is unreasonable. If only one regenerator in a multiple regenerator configuration were to become subject to the standards, it would be impossible in some multiple regenerator ducting arrangements to isolate and measure the SO_x content of the exhaust gases from the affected regenerator. Furthermore, because the refiner would want to minimize the cost and downtime for revamping work on the unit, it is unlikely that only one regenerator in a multiple regenerator configuration would be modified or reconstructed without the others. Therefore, the affected facility is now defined to include all regenerators serving an FCCU reactor.

The proposed definition of "fresh feed" specifically excluded those petroleum derivatives recycled within the FCCU. To ensure that a refiner would not circumvent the feed sulfur cutoff by adding low-sulfur content recycle from the fractionator and gas recovery unit, EPA has revised the definition of "fresh feed" in the regulation. The revised definition specifically identifies petroleum derivatives from the FCCU, fractionator, and gas recovery unit as recycle, and thus excludes them from the definition of "fresh feed."

Comment (RCC/ART Units): One commenter stated that the proposed standards should not apply to RCC process or ART units, because the RCC unit is designed to process residual feedstocks, and the ART unit is a feedstock upgrading unit, and, therefore, these units are not FCCU's.

Response: To upgrade residual feedstocks and to increase gasoline and middle distillate product yields, new processes termed HOC, which includes RCC, and ART are being installed at refineries. The HOC units are FCCU's that process residual and other heavy oil feedstocks. As in a conventional FCCU, emissions occur as a result of catalyst regeneration. Sulfur oxide emissions may, in fact, be greater from HOC units than from other FCCU's because HOC feedstocks have a higher coke make rate than gas oil feeds and a greater portion of the sulfur in HOC feedstocks forms coke than that in gas oil feeds. The EPA's analysis of SO_x emissions, control costs, and cost effectiveness for HOC units showed that the proposed standards for FCCU's are achievable and affordable for HOC units. The results of this analysis were presented in Appendix F of the proposal BID.

Emissions, emission control, and control costs for the ART process were further evaluated by EPA. The differences stated by the commenter between an ART unit and an FCCU do exist: The ART process does not employ a catalyst, but rather uses an inert microspheric contact material that collects contaminants; the objective of the ART process is feedstock upgrading, not processing; and some of the operating conditions may vary significantly.

Nevertheless, important similarities in regenerator configuration, operation, and emissions exist that warrant the regulation of an ART unit under the FCCU new source performance standards (NSPS). For both an ART unit and a conventional FCCU, regeneration is performed to burn off coke from the catalyst or contact material, thereby restoring it for reuse in the unit. Opacity and emissions of CO, SO_x, and particulate from an ART unit regenerator during normal operation are expected to be within the range of emissions from all types of FCCU regenerators, including those from HOC units. The EPA evaluated control feasibility and cost for an ART unit based on reported emissions and determined that control of an ART unit by a scrubber was applicable and had a reasonable cost. Based on a scrubber SO_x efficiency of 90 percent, the scrubber cost effectiveness calculated for the ART unit is below the range of cost effectiveness expected for FCCU's. In addition, costs to control CO emissions, if necessary, and particulate emissions are estimated to be reasonable.

The similarity in emissions from the regenerator and the availability of control equipment at a reasonable cost indicate that the ART unit regenerator can meet the FCCU standards. The facts that the objective of the ART process is different than that of the FCCU and that the material being regenerated is not a catalyst are not significant reasons to support the contention that an ART unit should not be subject to the FCCU NSPS. Therefore, the final standards require, as proposed, that an ART unit, HOC unit, or any other similar type of fluidized bed treatment unit regenerator achieve the FCCU particulate, opacity, CO, and SO_x standards.

Format of the Standards

Comment: Several commenters stated that EPA should establish a single SO_x standard for FCCU's because it would allow refiners the options and flexibility of determining the most cost-effective method of meeting that limit and it would comply with Section 111(h) of the Clean Air Act, which implies that the Administrator should prescribe a performance standard rather than a work practice or equipment standard, where feasible to do so.

Response: To develop SO_x emission standards for FCCU's, EPA evaluated all available techniques for controlling FCCU SO_x emissions. Upon thorough consideration of the availability, SO_x emission reduction capability, and impacts associated with each of these techniques, EPA determined that scrubbing systems effectively control SO_x emissions from all types of FCCU applications, and represent BDT for FCCU SO_x and SO_2 emissions.

The percent reduction format was selected because it best reflects the performance of add-on controls for all expected feed sulfur levels. This is consistent with section 111(a)(1), which requires that the standard reflect application of BDT.

However, for many FCCU applications, SO_x emissions can be reduced effectively and continuously without the use of add-on controls. This can be achieved by using SO_x reduction catalysts or low sulfur FCCU feedstocks obtained by either hydrotreating high sulfur feedstocks or processing naturally occurring low sulfur crude oils. Although these techniques may be less effective at reducing SO_x emissions than scrubbers for some FCCU applications, they have lower costs and smaller non-air environmental impacts than scrubbers. The EPA judged that it is reasonable to give up some emission reduction by

establishing a standard without add-on controls in return for the other benefits afforded by using SO_x reduction catalysts, hydrotreating, or low sulfur feedstocks instead of scrubbers. Therefore, EPA has established alternative standards for the sources that can effectively and continuously reduce SO_x emissions without the use of add-on controls. If a refiner believes that using SO_x reduction catalysts, hydrotreating, or low sulfur feedstocks for his particular FCCU application will not achieve the standard without add-on controls, then the refiner can still install and operate an add-on control device that achieves 90 percent reduction of SO_2 emissions.

The standards are performance standards and are consistent with section 111 of the Clean Air Act. Neither the add-on control standard nor the standard for FCCU's without add-on controls specifies the type of controls that must be used or exactly how the controls are to be operated to achieve the standard.

One commenter noted that by partial scrubbing of the FCCU regenerator exhaust gases, the emission level represented by the standard for FCCU's without add-on controls could be achieved for some FCCU applications. However, the 90 percent standard is intended to reflect the capability of scrubbers, which can achieve 90 percent control of the entire exhaust stream. A relaxation of the standard to 9.8 kg SO_x/1,000 kg coke burn-off would cause it to no longer reflect the capability of scrubbers.

Comment: Commenters questioned the coke burn-off format proposed by EPA for the standard for FCCU's without add-on controls. They noted that the coke burn-off format does not allow for variation in coke sulfur content and will discourage process improvements. They stated that EPA should consider a percent reduction format and a format in kilograms of SO_x per thousand barrels of feed.

Response: Based on a sensitivity analysis presented in Appendix F of the proposal BID, EPA concluded that the coke burn-off format relates well to normal fluctuations in SO_x emissions from FCCU's processing a variety of feeds. This is because SO_x emissions are related directly to the coke sulfur content. Normally, FCCU's are operated to limit the amount of coke that can be burned off in the regenerator. Process improvements that reduce the coke make rate are made to allow the refiner to process more feed through the unit until the unit is again limited in the amount of coke it can burn off. An example of a process improvement that results in reduced coke make is high temperature regeneration (HTR). The initial result of HTR would be reduced SO_x emissions from FCCU's on a mass basis. However, SO_x emissions in terms of coke burn-off would remain the same because SO_x emissions are related to the sulfur on coke. Thus, the refiner could increase throughput until the unit is again coke burn-off limited and still be within the standard even though emissions would increase. This format offers greater refining flexibility than a mass of SO_x per unit of feed basis. The commenters provided no new information to refute this conclusion.

A sliding scale format that allows for variation in coke sulfur content would be difficult to enforce because the sulfur content of the coke on catalyst is not readily obtainable. For this reason, EPA considers a sliding scale format unreasonable.

The EPA considered a percent reduction format for the standard for FCCU's without add-on controls, but rejected it because of compliance considerations. With SO_x reduction catalysts, there is no uncontrolled or inlet SO_x concentration to measure. Thus, it would be impossible to determine through stack testing the percent reduction being achieved by the catalysts. An alternative method would be to estimate the percent reduction achieved by SO_x reduction catalysts using EPA's correlation of feed sulfur with SO_x emissions. However, EPA's correlation represents an average for all FCCU's and feedstocks. While the correlation is useful for analyzing the overall impact of the standards, inlet SO_x concentrations may be lower or higher than the level predicted by the correlation for a specific FCCU and feedstock. Thus, the correlation cannot be used on a case-by-case basis. The cost to develop a separate correlation for each feedstock and FCCU affected by the standards is unreasonable. Because there is not a practical method for determining the SO_x inlet concentration when using SO_x reduction catalysts, EPA did not select a percent reduction format.

The EPA considers the coke burn-off format reasonable because of its direct relationship to the sulfur-on-coke relationship. The coke burn-off format is identical to the format selected for the NSPS particulate standard; the coke burn-off rate can be recorded reasonably and would be readily available.

Level of Standards

Comment (Without Add-On Controls): Many commenters stated that the standard for FCCU's without add-on controls should be set at 13 kg SO_x/1,000 kg coke burn-off because 80 percent reductions by SO_x reduction catalysts are not supported by the limited commercial tests cited by EPA. Also, a 13 kg SO_x/1,000 kg coke burn-off emission limit would allow more refiners to use the catalysts rather than add-on controls. The commenters believe that SO_x reduction catalysts are the only cost-effective and environmentally acceptable control alternative. One commenter stated that the emission reduction required by the standard for FCCU's without add-on controls is essentially equivalent to the level of control required by the Texas Air Control Board (TACB) to control FCCU SO_x emissions.

Response: The EPA disagrees with the comment that SO_x reduction catalysts are the only cost-effective and environmentally acceptable control alternative. The EPA determined, considering costs, environmental, energy, and non-air quality health impacts, that scrubbers effectively control FCCU SO_x emissions and are BDT. Furthermore, as an alternative to using SO_x reduction catalysts, refiners may use hydrotreating or low sulfur feedstocks to achieve compliance with the 9.8 kg SO_x/1,000 kg coke burn-off level.

The level of the standard (9.8 kg SO_x/1,000 kg coke burn-off) was selected to allow refiners flexibility to use SO_x reduction catalysts with best currently available performance, and to encourage the further development of the catalyst technology. For many feedstocks, especially those with lower sulfur content, the emission reduction needed to achieve the level of the standard is less than 80 percent. For example, a feedstock with 0.5 weight percent sulfur would need approximately 50 percent reduction in SO_x emissions to achieve the level of the standard. In response to the comments, EPA contacted a number of companies known to be developing SO_x reduction catalysts to request updated information on the performance and availability of developmental SO_x reduction catalysts. Based on a survey of SO_x reduction catalyst developers, current commercial SO_x reduction catalyst test data have been reported by the developers to reduce FCCU SO_x emissions by 65 to 75 percent. The test data reported by the developers span a wide range of catalyst performance; some data points show catalyst performance as high as 90 percent. As the technology continues to develop, refiners will be able to use the catalyst

technology to achieve the standard for a greater range of feedstocks.

Based on the results of SO_X reduction catalyst tests, EPA believes the level of the standard for FCCU's without add-on controls is reasonable. The determination of the level of this standard included consideration of the benefits of SO_X reduction catalysts and the increase in SO_X emissions compared to the BDT of scrubbing. Because the primary purpose of the standards is to reduce future FCCU SO_X emissions, and scrubbers can achieve cost-effective emission reductions, EPA concluded that it is not reasonable to further increase allowable emissions by raising the level of the standard. Should a refiner find that SO_X reduction catalysts will not reduce emissions sufficiently to achieve the 9.8 kg SO_X/1,000 kg coke burn-off level, the refiner still has the flexibility to use hydrotreating alone or in combination with SO_X reduction catalysts, to choose a lower sulfur content feedstock, or to install a scrubber.

Comment (Feed Sulfur Cutoff): Two commenters stated that an arbitrary feed sulfur cutoff of 0.30 weight percent sulfur is too restrictive, suggesting that a feed sulfur cutoff equivalent to 9.8 kg SO_X/1,000 kg coke burn-off be established by developing a correlation between feed sulfur content and SO_X production based on test data.

Response: The selection of the feed sulfur cutoff level of 0.30 weight percent was not arbitrary. As was discussed in the preamble to the proposed standards, the feed sulfur cutoff level was selected based on consideration of the costs for application of scrubbers to control SO_X emissions from FCCU's processing low sulfur feedstocks, and the feedstock sulfur levels refiners are expected to be processing if they elect to use naturally occurring low sulfur feed or to hydrotreat high sulfur feeds.

A correlation between FCCU feed sulfur content and SO_X emissions is presented on p. 3–18 of the proposal BID. The correlation is based on test data for a large number of FCCU's and feedstock types. Based on this correlation, an FCCU SO_X emission level of 9.8 kg SO_X/1,000 kg coke burn-off corresponds to a feed sulfur level of approximately 0.3 weight percent. Thus, the feed sulfur cutoff level established by EPA is approximately equivalent to the standard for FCCU's without add-on controls.

Averaging Times

Comment: Commenters stated that the averaging time for the standards should be increased. Several commenters suggested a 7-day averaging period for compliance because it would be consistent with the averaging time for the feed sulfur cutoff; no process variables could be adjusted in a 3-hour period to regulate SO_2 emissions when using SO_X reduction catalysts; and 7 days would account for variation in SO_2 inlet concentrations to the control device whereas 3 hours would not.

Response: After assessing the long-term variability by statistically analyzing in a times series analysis of the continuous SO_2 monitoring data from an EPA study of a sodium scrubber applied to an FCCU, the EPA agrees that the averaging time for compliance with the standards for FCCU's with and without add-on controls should be lengthened. The revised proposed standards included a revision of the compliance averaging time from 3 hours to 7 days. Six commenters agreed with EPA's revision. No commenters disagreed.

Comment: Two commenters stated that the averaging period for the feed sulfur cutoff should be a 30-day rolling average period. The use of the 30-day period would be appropriate because a 30-day rolling average period is used for the fossil fuel-fired steam generator NSPS.

Response: Whenever practical, EPA determines NSPS regulatory requirements on an individual source category basis. It is not appropriate to use a 30-day rolling average period for the FCCU feed sulfur cutoff standard simply to copy the fossil fuel-fired steam generator NSPS. The proposed 7-day averaging period was selected by EPA after careful consideration of a range of averaging periods. A daily averaging time was judged by EPA to be too short to account for sampling variability. Also, a daily averaging time would constrain a refiner's flexibility in blending different types of feedstocks for processing in the FCCU. A 7-day averaging time would reduce sampling variability and increase refiner flexibility in selecting the FCCU feedstock mix. However, increasing the averaging time beyond a 7-day period would allow feedstocks with sulfur contents significantly greater than 0.30 weight percent to be processed in the FCCU during a portion of the sampling period. Consequently, a refiner would be able to process high sulfur feedstocks without having to use any SO_X controls. This would be inconsistent with the intent of the standards to apply BDT to control emissions from the regenerator of FCCU's processing feedstocks with more than 0.3 weight percent sulfur. Therefore, EPA selected the 7-day averaging period to allow reasonable flexibility to the refiner for processing different sulfur content feedstocks.

Control Technologies and Economic Impacts

SO_X Scrubbers

Comment (Performance): Some commenters challenged EPA's assessment of the performance of scrubbers as applied to FCCU's. These commenters expressed the opinion that scrubbers should not be considered BDT because they are not demonstrated on high sulfur feeds and have poor operability. Another commenter supported EPA's statements that scrubbers can achieve 90 percent reductions in SO_2 emissions over the expected range of inlet SO_2 concentrations.

Response: Scrubber SO_X control is a function of the scrubbing liquor sorbent and good contact between the SO_X-containing flue gas and the scrubbing liquor. Based on engineering judgment, scrubbers applied to higher SO_X-containing gas streams would be expected to operate as well as those scrubbers applied to lower SO_X-containing gas streams. However, because scrubbers have not been applied to FCCU's processing high sulfur feeds, none was available for testing by EPA to confirm scrubber performance. Therefore, EPA compared the composition of FCCU exhaust gases to industrial boiler flue gases to determine if the performance of sodium scrubbers for industrial boilers is applicable to FCCU's processing high sulfur feedstocks. This comparison showed that the coke formed on the FCCU catalyst is a carbonaceous material similar to the coal used in solid fuel-fired industrial boilers. The catalyst coke is burned off the catalyst during regeneration by adding air to the regenerator. The regeneration process is thus similar to the combustion processes that take place in boilers. Given the similarities between catalyst coke and other solid fuels, the combustion process that takes place in the FCCU regenerator is expected to yield exhaust gases that are similar to those derived from coal-fired boilers. A comparison between FCCU regenerator exhaust gases and industrial boiler flue gases was presented in Table 4–3 in the proposal BID. The comparison showed that the ranges in concentration of most FCCU regenerator exhaust gas constituents (nitrogen (N_2), oxygen (O_2), carbon dioxide (CO_2), SO_X, nitrous oxides (NO_X)) are similar to the boiler flue gas concentrations. Scrubber systems installed on FCCU regenerators

will thus experience similar inlet concentrations as boiler scrubber systems.

The primary difference between FCCU regenerator exhaust gases and boiler flue gases is the particulate emissions. Boiler particulate emissions are higher and composed primarily of fly ash. Catalyst fines comprise the majority of regenerator particulate emissions. In an industrial boiler application, fly ash is typically collected upstream of a non-venturi type scrubber. A similar type of scrubber applied to an FCCU would require particulate control upstream from the scrubber. According to scrubber vendors, the particulates that pass through the particulate control device would not affect the design of the scrubber regardless of the application. This is because catalyst fines are no more erosive than fly ash and neither type of particulate would interfere with the scrubbing reaction. Thus, the difference in particulates from an industrial boiler and an FCCU are not expected to affect scrubber performance.

A second, less important difference is that hydrocarbon emissions from FCCU regenerators may be higher than those from boilers. The presence of hydrocarbons in the FCCU gas stream will not affect scrubber operation or performance. Due to the low solubility of hydrocarbons in the aqueous scrubbing liquor, the hydrocarbons will not be absorbed, but will pass through the scrubber to the atmosphere. Other differences in gas compositions are minor and are not expected to invalidate the applicability of scrubber systems for FCCU regenerators.

The similarities in flue gas flow rates and characteristics between industrial boilers and FCCU's and consideration of their differences support the reasonable conclusion that industrial boiler sodium scrubber performance is applicable to FCCU's. The commenter did not provide any information to show that scrubber performance for industrial boilers would be different than scrubber performance for FCCU's.

Source test results for a sodium scrubber applied to an industrial boiler burning a high sulfur fuel show that sodium scrubbers can achieve at least 90 percent reduction in SO_x emissions at high inlet SO_x concentrations. Therefore, in consideration of the above mentioned similarities, EPA has reasonably concluded that the FCCU standard is achievable and that scrubbers are applicable over the expected range of FCCU regenerator exhaust gas sulfur concentrations.

At proposal, sodium scrubbing systems had been effectively applied to seven FCCU regenerators at five refineries to control SO_x emissions. Since proposal, to the Agency's knowledge, two other scrubbers controlling FCCU's at two refineries have begun operation. There is no information to show that the operation of these sodium scrubbers has increased FCCU shutdowns, reduced refinery capacity, or reduced refinery profitability. Rather, the sodium scrubbers applied to FCCU's have operated continuously with no failures between FCCU turnarounds. The commenter provided no data to support his claims that scrubbers have poor operability. Thus, EPA continues to believe scrubbers are an effective control method for reducing FCCU SO_x emissions.

Comment (Water Impacts): Five commenters stated that the waste disposal aspects of the proposed standards are more complex than shown by the analysis presented in the proposal BID. Commenters stated that inland refiners would not be able to obtain a permit for the discharge of waste liquids from sodium scrubbers and would need to install expensive additional wastewater treatment systems to meet permitted discharge levels.

Response: The petroleum refining effluent guidelines (40 CFR Part 419) **Federal Register** technically apply to all wastewater from air pollution control devices when these wastes are treated with the main refinery wastewater or are discharged from the main refinery wastewater treatment system. The costs for the treatment of these wastes are accounted for under the Part 419 regulations. If the scrubber wastes are processed, treated, or discharged separately from the main refinery wastewater collection, treatment, or disposal system, then case-by-case determinations would be made to regulate them. However, the major polluting characteristic of the treated sodium scrubber wastestream is its high dissolved solids content, about 6 percent solids by weight, which consists primarily of sodium sulfates. There are currently no Federal regulations applicable to the dissolved solids content of the sodium scrubber wastestream. Instead, limitations on dissolved solids, where appropriate, would be developed on a case-by-case basis outside of the Federal effluent guidelines. Such limitations should be based on whether the receiving water body can still meet the relevant water quality standard. For many refineries, the sodium scrubber wastewater would constitute a small portion of the total refinery wastewater flow. Thus, the dissolved solids content of the combined scrubber and treated refinery wastestreams may be within permit levels.

All seven sodium scrubbers operating at the time of proposal to control SO_x and particulate emissions from FCCU's are located at coastal locations where no requirements exist for the discharge of sodium scrubber wastes to brackish or salt water. Further, at least one of the two scrubbers applied to FCCU's since proposal discharges to brackish water. However, sodium scrubbers have been used extensively at inland locations to control SO_x emissions from industrial boilers. Waste disposal methods used include discharge to a sewer, discharge to surface water, evaporative ponding, deep-well injection, and recycle. If a refiner elects to install a sodium scrubber but cannot obtain a discharge permit, he will need to use one of these disposal methods. These methods may be costly and have limited availability.

However, other SO_x scrubber systems with minimal wastewater impacts are applicable to FCCU's at a reasonable cost. These include dual alkali and spray drying scrubbers, which have no significant liquid waste but instead produce solid waste. There are also Wellman-Lord and citrate scrubbers, which have no significant liquid waste and produce a salable sulfur product. These scrubbing systems have demonstrated removal efficiencies of 90 percent on industrial boilers. Due to the similarities between industrial boiler and FCCU flue gases, these scrubbing systems are applicable to FCCU's. The costs and cost effectiveness of these scrubbers were evaluated by EPA and are judged to be reasonable. Alternatively, the refiner may choose to demonstrate compliance with the standard for FCCU's without add-on controls by using hydrotreating or SO_x reduction catalysts, or by complying with the feed sulfur cutoff using low sulfur feedstocks.

Comment (Solid Waste Impacts): Two commenters questioned EPA's assessment that sodium scrubbers would have no added cost impacts for solid waste disposal. One commenter asked how EPA determined that sodium scrubber waste is 50 percent water and felt that this increase in weight of total discharge would result in an incremental waste disposal cost "chargeable" to this standard. The other commenter stated that scrubbing systems could greatly increase the amount of solids generated, and thus increase disposal costs, provided disposal locations are available.

Response: The sodium scrubbing systems that are currently applied to FCCU's control both particulate emissions as well as SO_x emissions. With this type of scrubber, an additional particulate control device would not be required to achieve the current particulate standard. Control of FCCU particulate emissions (primarily catalyst fines) by a sodium scrubber does not incrementally increase the dry weight of solid waste over control by a dry particulate control device, such as an ESP. Therefore, the amount of particulate matter collected by the sodium scrubbers are not "chargeable" to the SO_x standards. However, solids collected in a scrubber would be wet and, thus, weigh more and encompass a larger volume. It will cost more to transport and dispose solids collected in a scrubber to a landfill than dry solids. The increase due to the amount of water added to the solids is "chargeable" to the SO_x standards and is included as a solid waste cost (at $20.13/Mg) in the analysis of sodium scrubber costs. In addition, a "liquid waste" disposal cost was added as a conservative estimate of the costs to dispose treated liquid scrubber waste to the sewer (see response to the comment on scrubber costs below).

To determine the additional solid waste disposal cost due to the water contained in settled scrubber solids (sludge), it was necessary to determine the percent solids content of the scrubber solids. However, EPA had no information regarding the water content of the settled particulates (sludge) because none of the settling ponds used for sodium scrubbers applied to FCCU's had been emptied. Instead, EPA had information regarding the solids content of wastes for other scrubbing systems, such as dual alkali scrubbers. For these other systems, the percent of solids in the scrubber waste is higher than that from sodium scrubbers, being typically 60 percent solids. The EPA assumed for cost purposes that the settled sodium scrubber waste would be approximately 50 percent solids, by weight.

Other types of nonregenerable scrubber systems, such as dual alkali, spray drying, or lime/limestone scrubbers, generate greater quantities of solid waste than generated by sodium scrubbers. A dual alkali scrubber controlling SO_x emissions from an FCCU processing a 1.5 weight percent sulfur feedstock will produce approximately 7,700 Mg/yr of solid waste for a 2,500 m^3/stream day (sd) FCCU and 25,000 Mg/yr for an 8,000 m^3/sd FCCU. The EPA considers the solid waste impacts for these systems reasonable. Should solid waste disposal locations not be available, the refiner would need to consider control techniques that do not produce solid waste, such as regenerable scrubber systems (e.g., Wellman-Lord or citrate scrubbers which produce salable sulfur products), hydrotreating, SO_x reduction catalysts, or low sulfur feedstocks.

Comment (Air Impacts): Commenters questioned the appropriateness of using scrubbers if they increase ground-level SO_x concentrations and one commenter suggested that EPA require reheating the scrubber exit gases to reduce ground-level concentrations and to include reheat in the sodium scrubber cost analysis.

Response: Scrubbing a gas stream lowers the temperature of the gas stream. Unless the gas stream is reheated downstream of the scrubber, the plume emitted from the scrubber stack will be cooler than the plume emitted from an FCCU regenerator not using a scrubber. Lowering the temperature of the plume reduces the effective height above the ground to which the plume will rise.

The results of dispersion modeling performed by EPA and presented in the proposal BID were used to analyze the air quality impact of the proposed standards. In all cases ground level SO_x concentrations are within the national ambient air quality standards. For all the model plant scenarios except the one processing a low sulfur feedstock, the ground level SO_x concentrations predicted for implementation of the proposed standards are lower than the baseline (uncontrolled) concentrations. In these cases, the decrease in SO_x emissions afforded by implementation of scrubbers offsets the lower plume rise.

The EPA agrees that if a control technique other than a scrubber was used to achieve the same emission reduction as the scrubber would achieve, the resulting maximum ground level concentrations may be less than if a scrubber were used. However, the application of SO_x reduction catalysts to meet the standard for FCCU's without add-on controls would provide less emission reduction than the application of scrubbers. The additional emission reduction provided by scrubbers would likely compensate for the lower plume rise, so that the use of scrubbers would result in lower ground-level concentrations than the use of SO_x reduction catalysts.

The stack temperatures, heights, and exit velocities used in the modeling analysis were selected as average values from data for actual FCCU scrubbers. Only one of the seven FCCU sodium scrubber installations existing at proposal is equipped with scrubber stack reheat. Reheat is used only occasionally to reduce the visible steam plume during certain weather conditions. For this reason, EPA believes that the modeling input parameters selected and the assumption of no reheat are appropriate.

Comment (Scrubber Costs): Five commenters stated the opinion that the scrubber costs presented in the proposal BID are unrealistic and are significantly underestimated. The commenters claimed that the scrubber cost estimates should be 2.2 to 7 times higher. The commenter's specific comments are identified in the response below.

Response: To respond to these comments, EPA decided first to solicit more detailed cost data for single alkali scrubbers from vendors and then to perform a general reevaluation of the cost data presented in the proposal BID. Concurrently, EPA solicited supplemental cost data from commenters and then addressed the individual comments pertaining to specific cost items.

A. *General Cost Review.* First, EPA solicited data from scrubber vendors other than the vendor who provided the costs on which the proposal BID cost estimates were based. This vendor is the only one whose scrubber has actually been installed on an FCCU. The EPA received detailed cost data from two other scrubber vendors, one of which has served as a subcontractor to the primary vendor in the installation of several of their scrubbers on FCCU's, and, therefore, is familiar with FCCU operation, refinery codes, and equipment specifications. The other vendor that supplied cost data has considerable experience with the design and application of scrubbers to industrial boilers, but not to FCCU's.

The analysis of these data showed that the costs provided by the primary vendor of single alkali scrubbers applied to FCCU's, were the highest of all the vendor cost estimates and are conservative due to more stringent design specifications than other vendors use and the use of redundant equipment that serve to provide the scrubber with the reliability that petroleum companies believe is necessary in the refining industry. In particular, the primary vendor's system design specifications call for vessel design coded by the American Society of Mechanical Engineers (ASME), and design of pumps, piping, and electrical equipment coded by the American Petroleum Institute (API); one of the other two vendors that

provided cost data did not specify such coded design. Vessels on scrubbers designed by the primary vendor are larger than those designed by the other two companies, and use special refractory linings to protect the steel shell from the abrasive effects of catalyst fines in the refinery flue gas. Further, the primary vendor's design requires sparing of all rotating equipment and critical analyzers, and specifies multiple venturis, rather than a single variable throat venturi as specified by the other vendors. Fluid catalytic cracking units may be in continuous operation for about 3 years nonstop, or significantly longer in some cases, and the primary vendor designs their scrubbers to maintain safe and reliable operation for time periods equal to that of the FCCU's the scrubbers control.

B. *Review of Specific Cost Comments.* Second, EPA considered the specific cost comments provided by companies.

One commenter stated that EPA's costs were low, in part, because of erroneous assumptions of FCCU exhaust gas volumes. The EPA concluded that the exhaust gas volumes used for the cost analysis for FCCU's using HTR are appropriate. Model plant FCCU exhaust gas volumes were developed based on stoichiometric relationships between the coke composition, the amount of air necessary to burn the coke, and typical levels of excess air. The calculated exhaust gas volumes were compared to actual exhaust volumes reported for FCCU regenerators and were found to be reasonable. Furthermore, the values used for the model plant regenerator exhaust gas volumes were sent to industry representatives for review prior to beginning the impact analyses, and no comments were received by EPA indicating that the exhaust gas volumes were not representative of actual conditions.

During these cost evaluations, EPA revised the exhaust gas volume for FCCU's operating with jet ejector venturis (JEV's) to include the flue gas contribution from the CO boiler. As a result, EPA also revised the capital and annual costs for JEV scrubbers installed on FCCU's. Fluid catalytic cracking units using CO boilers must install the JEV-type scrubber. The JEV costs presented in the proposal BID did not account for the additional flue gas volume that would enter a JEV scrubber because of the combustion air required in the CO boiler. The EPA determined that flue gas volume to a JEV scrubber would be about 10 percent higher than the volume of gas from an FCCU to a high-energy venturi scrubber. This increased volume resulted in about a 3-percent increase in the cost of the JEV scrubber over that previously calculated.

Several commenters stated that EPA used erroneous assumptions for scrubber waste disposal costs. The EPA, therefore, reviewed the waste disposal costs used in the proposal BID. The cost values used in the proposal BID represent the cost for the transport to and disposal of collected catalyst fines in a landfill. This solid waste disposal cost is based only on the additional mass of solid wastes to be disposed due to the use of a wet scrubber as the collection device instead of an ESP. In the proposal BID, no costs were credited to the disposal of the treated liquid wastes because EPA assumed that the treated liquid wastes were disposed to surface water. Upon review, EPA decided that it is appropriate to provide a more conservative estimate of liquid waste disposal costs by assuming that all affected facilities would discharge to sewers. Some refiners, especially in coastal locations, will likely be able to discharge the treated scrubber liquid wastes to surface waters without incurring a sewer discharge cost.

Two commenters questioned EPA's assumptions of off-site costs. Two other commenters stated that EPA did not consider site space or equipment variability, soil conditions, FCCU turnaround schedule, start up costs, or construction climate. The EPA has considered specific costs for off-sites, soil conditions, turnaround schedule, equipment availability, climate, and startup in the costs estimates. Off-sites include electricity, water, fire protection, steam, compressed air, and other utilities. The scrubber costs used by EPA to evaluate cost impacts include the cost of connecting utilities to the scrubber provided the utilities are located within the battery limits of the FCCU. The battery limits refer to that portion of the refinery associated with a particular process unit and its supporting equipment. Where utilities are not available or insufficient capacity is available within the FCCU battery limits, the refiner will incur a cost greater than that assumed in the cost estimates. However, a 20-percent contingency is provided in each capital cost estimate. The EPA considers the site-specific costs related to soil conditions, turnaround schedules, site space and equipment availability, climate, startup, and the expense of off-sites to be included in this contingency and, therefore, to have been considered by EPA.

In support of the comments on costs of construction climate, space and equipment availability, and pond and treatment system requirements, one commenter provided capital costs for the retrofit installation of a sodium scrubber to control both particulate and SO_x emissions from an FCCU at an existing refinery. The single alkali scrubber is sized for a flue gas volumetric flow rate similar to the 8,000 m^3/sd model plant used by EPA in developing costs. A comparison of the commenter's cost estimate with EPA's revised cost estimate shows that the total direct cost for both estimates is about the same. The commenter applied a 60-percent factor to account for indirect costs compared to the 40-percent factor used by EPA. The commenter also applied to this base cost estimate an additional 27-percent cost adjustment, which included labor productivity, design allowance, and construction climate. The EPA evaluated the commenter's cost factors and believes that these factors are adequately accounted for by EPA's 20-percent contingency cost factor. When adjusted to equivalent dollars, the commenter's cost estimate is approximately 50 percent higher than EPA's revised cost estimate for a single alkali scrubber of a comparable size installed on an existing FCCU.

The commenter's scrubber costs were developed from a preliminary factor-type cost estimate provided by a vendor. This type of cost estimate is developed in the early stages of a construction project when the project specifications are not very well defined. A factor-type estimate will typically contain several generous cost allowances to account for uncertainties in equipment specifications and construction. As a project becomes more defined, the final cost estimate normally is lower, and closer to the actual cost of the project. The EPA's costs are based on a vendor's experience with scrubber applications to FCCU's, and EPA believes that these costs are more representative of the actual cost of this scrubber design than the cost estimate provided by the commenter. Thus, the difference between the commenter's cost estimate and EPA's revised costs is largely due to the preliminary nature of the commenter's cost estimate.

One commenter indicated that EPA's cost estimates should more appropriately be based on the use of dual alkali flue gas desulfurization systems, because single alkali systems may not be applicable in areas where water availability or wastewater discharge is restricted. The commenter provided cost data to show that dual alkali systems are more expensive than

single alkali systems. A dual alkali scrubber consists of two parts, the "front half" and the "back half." The front half of a dual alkali scrubber resembles a single alkali scrubber without a wastewater treatment unit and performs the same function—removing SO_x from a gas stream by contacting it with a caustic or soda ash scrubbing liquor. In the back half of a dual alkali scrubber, however, the purge is treated to regenerate the scrubbing liquor for reuse; a single alkali scrubber simply treats and discharges the purged liquor.

The EPA agrees that, where direct discharge of scrubber wastewater is not permitted, dual alkali scrubbers would be a viable alternative to single alkali scrubbers because dual alkali scrubbers produce a calcium sulfate sludge that would be more readily disposed than wastewater, but disagrees that dual alkali scrubbing systems would be more expensive than single alkali.

The commenter compared capital costs for dual alkali scrubbers to EPA's proposed single alkali scrubber costs. The commenter's cost estimates were based on proprietary actual scrubber cost information provided by the commenter's contractors. For each of the model plants presented in the proposal BID, a computer cost model was used by the commenter to estimate dual alkali scrubber costs assuming 90 percent SO_x reduction. The commenter's dual alkali scrubber costs are a function of volumetric gas flow rates and sulfur loading. The commenters cost estimates for dual alkali scrubbing were significantly higher than EPA's proposal estimates for all dual alkali model units.

Because these differences existed, EPA performed a further evaluation of dual alkali costs based on data from vendors of dual alkali systems. Specifically, costs from the primary vendor of single alkali scrubbers to FCCU's were used to develop costs for the front half of both sizes of a dual alkali scrubber. Another vendor provided back half costs for both sizes of dual alkali scrubber. The primary vendor also provided EPA with a cost estimate provided to them by an independent vendor of dual alkali scrubbers for the back half of a dual alkali scrubber applied to the 8000 m^3/sd FCCU only. The commenter's and EPA's costs are based on a scrubber design that would control both FCCU particulate and SO_x emissions.

The EPA's revised capital cost estimates for dual alkali scrubbers are greater than those in the proposal BID, but less than the capital cost estimates for single alkali scrubbers provided by the primary vendor. This is because the back half of the dual alkali scrubber, where the purged scrubbing liquor is treated to regenerate it for reuse, was found to be less costly than the wastewater treatment system needed to treat the purged scrubbing liquor before discharge from a single alkali system. Construction costs for the in-ground ponds specified by the primary vendor for wastewater treatment are greater than the cost of the dual alkali sludge dewatering and disposal facilities.

A comparison of EPA's revised dual alkali costs with those provided by the commenter shows that the commenter's total dual alkali costs remained significantly higher than EPA's revised dual alkali total cost estimate. However, because the commenter's cost information is based on proprietary actual cost data developed by contractors of dual alkali scrubbers and provided to the commenter, detailed cost information was not provided to EPA by the commenter, and a comparison of EPA's individual capital costs to those provided by the commenter was not possible.

The EPA's analysis of data supplied by vendors of dual alkali systems indicates that total single alkali scrubber costs are more costly than total dual alkali scrubber costs rather than less costly as the commenter believes. Therefore, EPA's current cost estimates for model plants, which reflect the use of only single alkali scrubbing, represent a conservative estimate of nationwide costs; dual alkali cost estimates applied to the model plants would only decrease the national costs. Therefore, it was decided not to revise costs of SO_2 control of model plants to reflect the use of dual alkali at some facilities.

This commenter also provided cost data for single alkali systems. The EPA performed an analysis of this single alkali cost data for comparison to single alkali cost estimates in the proposal BID. The commenter's costs for single alkali scrubber systems are similar to EPA's revised costs for the low sulfur model plants, but are significantly higher than EPA's revised costs for the 1.5 and 3.5 weight percent sulfur model plants. The commenter's single alkali cost estimates assume that single alkali capital costs are 93 percent of dual alkali costs. The EPA believes this approach is inappropriate because, whereas capital costs for dual alkali systems are a function of both waste gas flow rate and feed sulfur content, capital costs for single alkali systems are a function only of waste gas flow rate. Dual alkali control requires equipment to regenerate the reagent solution, the cost of which depends, in part, on the sulfur content of the flue gas. Because single alkali systems do not have such equipment, capital costs of single alkali control are a function only of waste gas flow rate. Therefore, single alkali cost estimates derived by applying a constant percentage of dual alkali costs for different sulfur content models would result in erroneous estimates. The EPA believes, therefore, that the accuracy of the commenter's single alkali costs, which increase with feed sulfur content, is doubtful.

Two commenters stated that EPA needed to reevaluate the cost of retrofitting existing FCCU's with scrubbers. The EPA reevaluated these costs. Costs associated with retrofit will vary widely from one refinery to another based on the refinery configuration and the availability of land. In some cases, space limitations around an existing FCCU may result in relocating utilities and piping runs, longer ducting runs, and other factors that may make scrubber installations more difficult than at a new refinery. Therefore, EPA agrees that retrofit should be included in the cost estimates for some model plants. A retrofit cost factor of 20 percent of the scrubber capital cost (less contingency) was estimated by one commenter. This cost was added to three of the seven modified or reconstructed FCCU's anticipated to be subject to this standard during the first 5 years after the effective date of the standard.

One commenter stated that EPA did not consider a cost for business interruption that would result from a scrubber malfunction shutting down the FCCU. Although sodium scrubbers have demonstrated reliability factors in excess of 95 percent, scrubber malfunctions can occur. The General Provisions to 40 CFR part 60 states that emissions in excess of an emission limit during a period of malfunction of a control device are not considered a violation provided the control device has been properly operated and maintained. During a period of a sudden or unavoidable scrubber failure, the refiner would still be able to operate the FCCU. Therefore, no business interruption cost would be incurred. For this reason, EPA did not include a business interruption impact when revising the proposal BID costs.

One commenter stated that EPA subtracted an ESP cost credit inappropriately in the cases of an existing FCCU with an ESP in place if scrubbers are required as a result of modification/reconstruction. The EPA agrees that an ESP cost credit is not appropriate in these cases. The proposal BID costs were revised to eliminate the ESP cost credit for the three modified or

reconstructed FCCU's in which retrofit costs were included.

C. *Summary of Cost Changes.* As a result of both the general reevaluation of costs and the review of specific cost comments, EPA revised the capital and annual cost estimates for FCCU scrubbers. The following changes were made: (1) Costs of individual components were adjusted based on the data received; (2) JEV scrubber costs were revised to account for increased flue gas volume entering the scrubber as a result of CO boiler combustion air; (3) waste disposal costs were increased to include liquid waste discharges; (4) a cost for retrofit installation was added for the modified or reconstructed FCCU's; and (5) the ESP cost credit was deleted for the three scrubbers that were installed on modified or reconstructed FCCU's and for which retrofit costs were included. Costs were then further adjusted to 1984 dollars.

After both the general and the specific cost analyses, EPA concluded that the proposal BID costs are not understated by a factor of 2.2 to 7. Changes in cost as described above caused nationwide capital costs to increase by 30 percent (from $72 to $93.6 million); adjusted to 1984 dollars, capital costs increased a total of 63 percent from proposal (from $72 to $117 million). Changes in cost caused nationwide annual costs to increase by 5 percent (from $35 to $36.6 million per year); adjusted to 1984 dollars, annual costs increased a total of 29 percent from proposal (from $35 to $45 million per year).

Thus, these estimates show that the standards would result in a total nationwide capital cost for SO_x control for the first 5 years after the effective date of the standards of $117 million, assuming sodium-based scrubbers are used at all facilities processing feedstocks with sulfur content above 0.3 weight percent. The fifth year nationwide annual cost is $45 million. Units processing feedstocks with sulfur contents of 0.3 weight percent would be below the feed sulfur cutoff and, therefore, would not need to install a scrubber. Where sodium scrubbers are not applicable, dual alkali scrubbers could be used at a similar cost to sodium scrubbers.

SO_x Reduction Catalysts

Comment (Performance): Commenters stated that SO_x reduction catalysts are not demonstrated and cannot achieve 80 percent reductions in SO_x emissions.

Response: The EPA considers SO_x reduction catalysts to be an emerging technology. The standards allow for their use and thereby encourage their further development. Current catalysts show promising results. As described in the "Level of Standards" section of this preamble, current SO_x reduction catalysts can achieve SO_x emission reductions of 65 to 75 percent. Additionally, for many feed sulfur levels, the standard can be met with less than 80 percent SO_x emission reduction.

Comment (Solid Waste Impacts): One commenter stated that, according to the preamble, SO reduction catalysts are not expected to have a solid waste impact. The commenter estimated, however, that the use of SO_x reduction catalysts would increase FCCU solid waste by 11,000 Mg/yr.

Response: The EPA does not believe that the use of SO_x reduction catalysts would result in a significant increase in FCCU solid waste. When used as an additive, SO_x reduction catalysts replace from less than 5 to 10 percent of the circulating catalyst inventory. One of the catalyst developers stated that, due to the softness of their SO_x reduction catalyst (an additive), its makeup rate is greater than that for the cracking catalyst. The developer reported that this may result in an increase in solid waste of up to 40 percent. Based on recent tests by another developer, solid waste increases of less than 5 percent are anticipated for the newer SO_x reduction catalyst formulations because these are much harder than earlier formulations. The EPA believes that it would be in the catalyst developers' interest to produce a harder reduction catalyst because a harder formulation would have a lower makeup rate and therefore, most likely would cost less to use than a softer one. Other recently developed catalyst formulations incorporate the SO_x reduction catalyst as a constituent of the cracking catalyst and consequently, SO_x control can be accomplished without increasing the total quantity of cracking catalyst used in the FCCU over a period of time. In this case, SO_x reduction catalysts would not increase particulate emissions or solid waste. In summary, whether the SO_x reduction catalyst is in the form of an additive or a constituent of the cracking catalyst, it is unlikely that the use of newer SO_x reduction catalyst formulations would significantly increase FCCU solid waste over current levels.

Comment (Air Impacts): One commenter stated that the preamble to the proposed standards does not adequately address the effect of SO_x reduction catalysts on NO_x emissions. The commenter pointed out that the preamble states that SO_x reduction catalysts would not increase NO_x emissions, while the proposal BID and a docket entry show that SO_x reduction catalysts raised NO_x emissions.

Response: Most refiners use one of two techniques to control CO emissions from the FCCU regenerators: HTR or catalytically promoted CO combustion. Data from some tests of NO_x emissions from regenerators using both CO combustion promoter catalysts and SO_x reduction catalysts in combination show an increase in NO_x emissions. Separate data for regenerators using CO combustion promoters without SO_x reduction catalysts suggest that the use of these catalysts may increase NO_x emissions. Thus, at this time, it is unclear whether the NO_x increases observed for SO_x reduction catalyst tests are due to the reduction catalyst or the CO combustion promoter. Recent commercial tests of SO_x reduction catalysts in FCCU's utilizing HTR show no increase in NO_x emissions. No recent tests of SO_x reduction catalysts in FCCU's utilizing CO promoters were available. Because most FCCU's subject to the standards are expected to use HTR and because newer SO_x reduction catalyst formulations have not increased NO_x emissions, EPA believes that the use of the SO_x reduction catalyst technology will not increase NO_x emissions.

Comment (Costs): Three commenters wrote that in certain circumstances the SO_x reduction catalyst technology requires a capital outlay. The circumstances identified by the commenters were: (1) Because SO_x reduction catalysts can only be used in units with HTR, older units subject to the standards under the modification or reconstruction provisions that do not or cannot operate in this mode will be required to convert or modify units; (2) small refineries that do not have sulfur recovery units; and (3) refineries with inadequate sulfur recovery unit capacities to handle the increased sulfur load due to the SO_x reduction catalyst technology. In addition, two commenters stated that annual costs for SO_x reduction catalysts will likely be at least 2 times higher than EPA's estimate.

Response: Many refiners have modified their older FCCU's to HTR; HTR offers advantages over conventional regeneration (e.g., reduced SO_x emissions, improved yields, and increased throughput). It is unlikely that an older FCCU would become subject to these standards through the modification/reconstruction provisions without modifying the unit to HTR. A refiner is more likely to use SO_x reduction catalysts in an FCCU modified for HTR than to modify an FCCU solely to use SO_x reduction catalysts. If an

FCCU subject to these standards cannot utilize SO_x reduction catalysts, the refiner is more likely to select another control technique than incur a $10–20 million capital expenditure.

Use of SO_x reduction catalysts will increase the amount of hydrogen sulfide (H_2S) in refinery fuel gas, which is removed from the fuel gas in a sulfur recovery unit. The increase in the amount of H_2S to a sulfur recovery unit is only about 5 to 10 percent. Sulfur recovery units generally are overdesigned by much more than this to account for swings or surges in H_2S production from refinery process units. It is doubtful that the use of SO_x reduction catalysts alone would overload a sulfur recovery unit.

The EPA contacted companies developing or licensing SO_x reduction catalysts to obtain current costs for commercially available SO_x reduction catalysts. Catalyst developers reported costs for the technology ranging from $0.60 to $1.60 per cubic meter of fresh feed processed. The fifth year cost for SO_x reduction catalysts was then calculated by multiplying the cost factors provided by the catalyst developers by the total fifth year annual throughput for all affected facilities processing feedstocks containing greater than 0.30 weight percent sulfur. The new fifth year cost for SO_x reduction catalysts ranges from $20 million to $50 million. Costs for SO_x reduction catalyst are presented as a range because the technology is under development. The upper end of the range represents a newer catalyst formulation; the developer of this catalyst expects the cost to decrease as the catalyst formulation is produced in greater quantities.

Economic Impacts

Comment: Several commenters stated that the proposed standards would have an adverse effect on the refining industry and the nation's economy. Four commenters wrote that the compliance costs are sufficiently high to require the preparation of a Regulatory Impact Analysis under Executive Order 12291. One commenter wrote that current prices will reduce the attractiveness of FCCU modifications to the point where the additional cost of a scrubber or other SO_x control device would not be feasible. Three commenters wrote that the costs of the proposed standards would, in some cases, postpone new investments and would cause a significant economic impact on the profitability of FCCU operation and the construction of new FCCU's.

Response: The cost analysis presented in the proposal BID was reviewed under Executive Order 12291 by the Office of Management and Budget (OMB). Since that time, in response to comments, EPA has revised these costs upward. With these revisions, the fifth year nationwide annualized costs are still below the $100 million level that triggers a regulatory impact analysis under Executive Order 12291. The price increases published in the proposal BID were all less than 0.4 percent. Using the revised control costs and second quarter 1984 product prices, that figure increases to approximately 0.8 percent for the worst case considered (3.5 weight percent sulfur feedstock). The EPA still considers this to be acceptable.

The capital required for the control devices will increase the investment for a new FCCU by 9 percent for the 8,000 m^3/sd unit and by 15 percent for the 2,500 m^3/sd unit. The EPA does not consider these percentages sufficiently high to deter a decision to install an FCCU that is otherwise economically justified.

Compliance Testing and Monitoring

General

Comment: Two commenters pointed out that as proposed SO_x testing would be conducted upstream of the CO incinerator while velocity and volumetric flow rates would be determined downstream of the CO incinerator. One commenter pointed out that the regulation indicates that sampling for SO_x concentration "shall be the same as for determining volumetric flow rate;" the commenter believed the regulation statement is correct. One commenter stated that it is unsafe to require personnel to conduct manual sampling due to the high flue gas temperatures at this location (650–769 °C) and that sampling at extreme temperatures is impractical due to frequent sampling train operating problems and rapid sample probe failures.

Response: The EPA agrees that SO_x testing should be performed at the same location as the volumetric flow rate measurement, as is specified in the regulation.

The EPA recognizes the commenter's concern regarding safety. Sampling either upstream or downstream from the CO boiler is acceptable for the standard without add-on controls. However, if the owner or operator chooses to test downstream of the CO boiler, alternative calculation procedures for determining the coke burn-off rate and the SO_x contribution due to the auxiliary fuel burned in the boiler must be submitted to and approved by the Administrator. In addition, the recommended location for the inlet CEMS has been changed to downstream of the CO boiler for the standard with add-on controls.

Add-On Control Devices

Comment: One commenter stated that an operator of an add-on control device should be given the flexibility to choose between the original proposal, which would have required using an outlet monitor only, and the operation of a CEMS in which both an inlet and outlet monitor are used.

Another commenter stated that after the compliance test, the proposed standards only need an "alerting service," which could be provided by an outlet monitor alone.

Response: The standard for FCCU's using add-on controls is 90 percent reduction or 50 vppm, whichever is less stringent. The intent of monitoring for the standard for add-on controls is to determine compliance on a daily basis, as described in the revised proposal. To meet this intent, the Agency needs data that show the actual compliance status of the source, not data that simply alert the Agency to potential problems. To make an accurate determination of compliance with the 90 percent reduction standard, the Agency must have both scrubber inlet and outlet data. Even where feed sulfur is not "highly" variable, the outlet concentration may vary due to FCCU operation or the source of the feed, while scrubber performance may stay constant. Therefore, measuring only the outlet emissions may lead to an incorrect compliance determination for the percent reduction standard. The Agency recognizes, however, that an inlet monitor is unnecessary for making continuous compliance determinations in relation to the 50 vppm standard for add-on controls. Thus, the Agency has modified the regulation so that owners or operators may choose to declare their intent to meet the standard for add-on controls by limiting their outlet SO_2 emissions to 50 vppm and install a CEMS at only the outlet of the control device to determine compliance. The Agency wishes to point out that, for such owners or operators, compliance determinations will be made only on the basis of the outlet SO_2 emissions without regard for the percent reduction being achieved by the control device. Such owners or operators may change their choice so they would be subject to the whole standard on "90 percent reduction or 50 vppm, whichever is less stringent," provided a CEMS is installed and maintained at the inlet of the control device as well as the outlet.

Comment: One commenter felt that because an add-on control device achieves greater reductions in SO_2 emissions than technologies meeting the standard without add-on controls, "less drastic" compliance monitoring requirements for scrubbers are reasonable. This commenter proposed that compliance be determined instead by an initial performance test, quarterly monitoring of inlet and outlet SO_x concentration using EPA Reference Method 6 or 6B, and continuous monitoring of wet gas scrubber process variables, such as pH, liquid-to-gas ratios, and pressure drop, to evaluate scrubber performance in an ongoing basis.

Response: Monitoring and testing requirements are chosen to be appropriate for the control technique and to meet the intent or goal of the monitoring and testing. The relative stringency of different control techniques has no bearing on the selection of the most appropriate monitoring or testing requirement for each control technique.

The purpose of monitoring for these standards is determining compliance on a daily basis. The procedure suggested by the commenter does not give information from which the compliance status can be determined daily.

Comment: Several commenters stated that continuous SO_2 monitors are unreliable due to monitor operational problems. One commenter proposed that the requirement for continuous monitoring of the inlet and outlet to add-on controls be eliminated, while another commenter recommended an increased allowance for CEMS downtime and maintenance, such as requiring data for 15 days per month instead of 22, and 12 hours per day instead of 18. One commenter stated that, to his knowledge, EPA does not have CEMS data showing that the device can run 24 hours per day for one full month and give accurate results. He also asked about the frequency of manual emission testing that would be required when the CEMS fails.

Response: The EPA extensively studied the reliability of SO_2 and diluent CEMS during the development of subpart D, subpart Da, and appendix F of 40 CFR part 60. Current studies show that state-of-the-art monitoring systems provide precise and accurate data when proper operation and maintenance techniques are employed on a continuous basis. Experience has shown that approximately 2 hours per day of manual attention is necessary to obtain an 85 percent or greater availability. Further, as discussed in the BID for the proposed standards, Appendix D, FCCU catalyst regenerator exhausts are similar to those of coal-fired steam generators; therefore, the continuous SO_2 monitoring technology proven acceptable for steam generators should be applicable to FCCU catalyst regenerators. The SO_2 monitors have been installed on some FCCU catalyst regenerators; EPA has gathered information on the operational history of some of these CEMS but the data were insufficient to compare directly to appendix F to 40 CFR part 60, which contains quality assurance procedures for CEMS used for compliance determinations.

The Agency has, for example, conducted tests at a sodium scrubber on an FCCU using inlet and outlet SO_2 CEMS. The outlet monitor was on a saturated gas stream without reheat of the flue gas. There was no particulate removal in the flue gas prior to the inlet monitor. The duration of the testing was about 12 days. Over this time, no difficulty was experienced in obtaining valid data. Some regular backflushing of the outlet analyzer system occurred due to the saturated nature of the flue gas. This limited time testing suggests that with careful maintenance of the monitors, long term use and potential problems can be avoided. The difficulty stated with regard to outlet monitors on a saturated gas stream can be overcome through adequate design and maintenance of the CEMS. (The commenter does not state that the difficulty cannot be overcome, but rather just that it is difficult.)

A particular concern of several commenters was particulate plugging. The Agency does not agree that particulate plugging will be a problem if the monitor is properly designed and operated. In-stack filters have been redesigned with better shields, and improved outside-stack conditioning systems have been developed that allow removal of the in-stack filter, when necessary. Furthermore, technologies are available to circumvent CEMS plugging. Properly designed systems usually have back-purge capabilities to prevent particulate plugging of the sampling probe in the stack. Studies have also shown that high pressure (greater than 70 psi) air in backflushing sample lines and probes improves removal of particulate and moisture from the in-stack probes and filters both upstream and downstream of scrubbers. Manufacturers of the systems and installation personnel would be responsible for designing each system for a specific source.

Based on these studies, EPA has concluded that continuous SO_2 monitors are reliable and accurate when properly operated and maintained, and are capable of meeting the minimum requirements for determining compliance with these standards. Thus, the promulgated standards retain the requirement for continuous SO_2 monitors.

The EPA does not expect the CEMS to run nonstop for 24 hours per day for an entire month. To allow for periods when CEM's are shut down for various reasons, minimum data requirements were established. The EPA based its selection of 18 hours of data in a 24-hour day and 22 days of data out of 30 days on the minimum data requirements for compliance determinations specified for utility boilers under subpart Da of 40 CFR part 60. Under these standards, EPA concluded that the required data to be collected provided sufficient information to characterize emissions, and that properly operated and maintained CEMS's were capable of meeting these requirements. The operating conditions at the upstream CEMS at FCCU's are similar to those found at a subpart Da boiler CEMS prior to the flue gas scrubber. The minimum data requirements (i.e., collection of 18 valid hours of data per day for 22 days out of every 30) provide for downtime enabling the owner or operator to maintain and calibrate the CEMS and correct minor malfunctions.

Manual testing is not required when the CEMS fails provided the facility meets the minimum data requirements. Malfunctions are not likely to occur every 30-day period. Thus, EPA expects that most CEMS's routinely will operate better than the minimum data requirements and supplemental sampling will be rarely necessary to meet them.

Many methods are available for supplemental sampling; each owner or operator would develop an approach to obtaining these minimum data in the Quality Control Plan required by Procedure 1 of 40 CFR part 60 appendix F. Any acceptable sampling scheme would have to obtain data representing at least 18 hours of operation daily. If Method 6 is used, the minimum sampling time is 20 minutes and the minimum sampling volume is 0.02 dry standard cubic meters (dscm) (0.71 dry standard cubic feet (dscf)) for each sample. Samples are taken at approximately 60-minute intervals; each sample represents a 1-hour average. To obtain one valid day from supplemental sampling requires 18 valid samples. Method 6B, if used, would also have to collect a sample representing a minimum of 18 hours. If a back-up monitor is used instead, then a minimum

of 18 valid hours to obtain a valid day is still required.

Comment: Two commenters questioned the costs of CEMS's reported by EPA. One commenter asked whether the sample collecting and conditioning systems needed to ensure a reliable CEMS were included in the price of the CEMS and whether the Agency updated the costs from the original proposal. The other commenter felt the Agency substantially underestimated the costs of a CEMS.

Response: The cost of the additional CEMS reported in the revised proposal notice reflected the cost of an extractive analyzer and installation (in February 1981 dollars). The Agency updated the original 1981 costs for the extractive analyzer system and obtained a revised fourth quarter 1984 cost estimate of $69,300 (including installation and data acquisition system (DAS); $46,200 without the DAS).

The Agency also recently attempted to obtain updated CEMS cost data by contacting vendors and source owners or operators using CEMS. The study found total worst-case costs for an extractive analyzer (including a DAS and installation) to be from $45,000 to $180,000 (1984 dollars). (The worst-case costs included additional costs for longer sample lines, corrosion-resistant probes, probe back-flush systems, and computer data acquisition systems capable of generating emissions reports.) The commenter provides an estimate of about $100,000 (analyzer, sampling system, and installation). Taking out the cost of a DAS (about $23,000) from the worst-case costs, the commenter's estimate falls in the middle-to-upper end of the worst-case costs. The Agency notes that its original cost estimate for an extractive analyzer, when updated to 1984 dollars, still falls within the worst-case costs range reported in the updated study.

Updating the across-the-stack cost estimate, which was for a complete outlet monitoring system, to fourth quarter 1984 dollars yields a cost estimate of about $92,900 for the analyzer, DAS, and installation. Data on across-the-stack CEMS gathered more recently show total worst-case vendor costs without a DAS from $22,000 to $152,000 (1984 dollars). The one commenter estimated costs of about $150,000 to $175,000 per analyzer (analyzer, sampling, and installation), which falls at the upper range of the worst-case vendor estimates.

The annual maintenance costs estimated by the Agency in the proposal BID appendix D were $11,000 for either an extractive or across-the-stack CEMS. Updating the cost results in an estimate similar to the commenter's estimate of $16,000 for an extractive system and is more conservative than the commenter's estimate for an across-the-stack system.

Without Add-On Control Devices

Comment: Several commenters stated that EPA had underestimated the costs of daily Method 8 testing. Commenters estimates ranged from $184,000 to $400,000/yr per FCCU. Commenters did not think it was reasonable to claim the costs to be "reasonable" when the costs are based, in part, on a traversing system not yet developed. One commenter believed that insufficient qualified contractor manpower exists to conduct the Method 8 compliance sampling.

Response: The EPA agrees with the commenters that the assumption of an automatic traversing system should not be used for evaluating and recommending daily Method 8 testing, although the Agency still contends that it is technologically feasible. Instead, the Agency has revised the cost estimate assuming that a monorail system will be installed at each of the two sampling ports and that a single sampling train will be used, with manual movement of the sampling train for traversing and changing ports. Although not addressed by the commenters, EPA decided that it was appropriate to also include a cost for an enclosed sampling area to protect the sampler and equipment from various weather conditions, such as rain and snow. The capital cost of the monorail system and enclosure is estimated to be $20,000. When the Agency originally estimated the cost using an automated traversing system, two sampling trains were assumed, one in each port. With the revised assumptions, only one sampling train is used, and is moved from one port to the next. The standard requires one 3-hour sample per day, 365 days per year; this halves the number of samples to be analyzed to 365 (1 per day).

The EPA disagrees with the commenters' claim that three or more people would be devoted full-time to this stack testing. Only one 3-hour sample is required each day. The Agency believes that it would take an average of 8 labor hours per day to prepare the equipment, conduct the sampling, and perform periodic maintenance on spare equipment, with added labor for analysis of about 1.3 hours per sample. The revised annualized cost per affected facility is estimated to be $120,000.

The EPA assumed that in-house personnel would be used to conduct the Method 8 compliance sampling. The EPA believes there is sufficient lead time to train such personnel without requiring or solely relying on contractor manpower.

Comment: Many commenters stated that daily testing should be deleted from the standard for FCCU's without add-on controls. The commenters felt that daily testing was too costly and unduly burdensome, especially, according to one commenter, when compared to the costs of monitoring for the scrubber or testing under the feed sulfur cutoff. One commenter stated that the cost of daily Method 8 testing could hamper improvements in SO_x reduction catalyst development.

Response: The Agency recognizes that daily testing with Method 8 is not inexpensive, but that it is also not an unreasonable cost. The Agency has examined various methods available to show daily compliance with the standards. For facilities that opt to use SO_x reduction catalysts to meet the standards, the Agency has determined that daily Method 8 testing is currently the only viable alternative that enables the Agency to be sure that the owner or operator is in compliance on a daily basis.

The relative costs of the various methods for determining continuous compliance available to all affected facilities subject to the standards is not a valid basis for rejecting one method or another. What is relevant is whether the total (capital, annual, monitoring, etc.) cost of compliance for meeting the standards for an affected facility is reasonable or unreasonable. Daily testing is needed for this standard in order to show daily compliance, and the cost of such testing, in the Agency's assessment, is reasonable.

The Agency disagrees that daily testing is too costly and unduly burdensome. The Agency studied the potential economic impact of the standards on small and large refineries and reported and discussed the findings in the original proposal notice to these standards (49 FR 2072). The economic impact to the small (and large) refiner is expected to be small because most, if not all, of the cost should be capable of being included in the prices of the refined petroleum products and the resulting price impact is reasonable. These results were obtained assuming compliance by all projected affected facilities with the standard for FCCU's with add-on controls, which is more expensive than compliance with the standard for FCCU's without add-on controls. Therefore, the economic impacts of complying with the standard for FCCU's without add-on controls will be smaller.

The Agency believes that the monitoring costs associated with daily Method 8 testing are unlikely to affect SO_x reduction catalyst development. Even with the higher testing costs, SO_x reduction catalysts are still likely to be overall less costly to use than scrubbers. Thus, development on SO_x reduction catalysts will still continue as owners or operators try to minimize their costs in meeting these standards.

In conclusion, the Agency believes that the cost of daily Method 8 testing is reasonable in order to ensure daily compliance. Less expensive methods that allow the Agency to make equivalently accurate daily compliance determinations are encouraged and may be used subject to the approval of the Administrator.

Comment: One commenter stated that the proposed regulation does not supply sufficient information (calculation procedures) under Section 60.106, "Test Methods and Procedures," to determine total SO_x emissions.

Response: The EPA agrees with the commenter. Therefore, the regulation has been revised to indicate that modification to the calculation procedures specified in Reference Method 8 will be required to calculate total SO_x emissions as SO_2.

Comment: Many commenters suggested alternatives to daily Method 8 testing for demonstrating continuous compliance. The commenters suggested three basic types of alternatives: (1) The use of less frequent Method 8 testing, (2) periodic testing for SO_x until an SO_3 CEMS is developed, and (3) the use of continuous SO_2 monitors with periodic testing for SO_3. One commenter stated, in general, that the daily application of Method 8 is cumbersome, and thus, the proposed rule should contain provisions to allow the permittee to demonstrate continuous compliance based on a broader spectrum of options.

Response: The Agency has considered the alternatives suggested by the commenters. The Agency agrees that any test should not be performed more frequently than necessary and that a history of test data may show that daily testing is unnecessary. However, such a "history of test data" does not exist at this time and without such data, the Agency does not believe any of the alternative monitoring or testing schemes suggested can be implemented at this time and ensure that accurate continuous compliance determinations are made. Further, the commenters provided very little data to support their arguments, and available data show that the SO_3/SO_x ratio can be variable.

One of the commenters provided literature on an SO_3 monitor that they thought should be able to monitor SO_3 also. The information and literature provided were insufficient for the Agency to evaluate this potential for this particular monitor.

The Agency has examined other monitors for their ability to monitor SO_x. To date, none of the monitors examined has proven suitable. Therefore, the Agency could not require at this time such a monitor. The Agency does agree that many of these alternatives may be shown acceptable as more data on SO_x reduction catalyst use and SO_x emissions are generated. Therefore, the standard explicitly states that such alternatives supported by sufficient data may be approved on a case-by-case basis. Some of the criteria that may be considered are the SO_3/SO_x ratio, product feed variability, frequency of product slate changes, operational variability in regenerator conditions (e.g., excess oxygen, temperature), catalyst addition schedules, and FCCU operating conditions. The development of a successful SO_x monitor would also be an acceptable alternative, upon approval by the Administrator, to Method 8 testing. In the meantime, however, the Agency has retained daily Method 8 testing for determining compliance on a continuous basis for the standard for FCCU's without add-on controls.

Comment: Two commenters expressed concern over the possible interfering effects of particulates when performing Method 8 or revised Method 8.

Response: The EPA agrees that the presence of "other particulate matter" could invalidate the Method 8 test results. Therefore, appropriate changes have been made in the regulation to permit the insertion of a heated filter and probe in the sampling train, prior to the impingers. The heated probe and filter will prevent the particulate matter from getting into the impinger solution. Filters would be required that are at least 99.95 percent efficient, as required in Section 3.1.1 of Method 5. There is no indication or reason to suspect these filters would not eliminate the analysis problem. If analytical interference because of particulate matter still exists, then alternative analytical techniques (for example, ion chromatography) are available for use upon approval by the Administrator.

The Agency has not conducted testing of Method 8 as modified under these standards to specifically address the commenter's concerns. The Agency knows of no technical reason, however, as to why the modifications to Method 8 under this subpart would adversely affect the repeatability, reproducibility, precision, or accuracy of Method 8. In addition, EPA is currently developing test procedures for minimizing the sulfate interference in particulate matter measurements. The alternative of measuring both particulate matter and SO_x with the same equipment and analytical techniques will be addressed at that time.

The EPA acknowledges that ammonia has known interfering effects on SO_x determinations. We believe there are alternative techniques to eliminate the interference and are currently studying potential interference problems with respect to ammonia. Thus, in cases where ammonia and/or amines are expected or are known to create problems, the owner or operator should consult the Administrator for approval of alternative test methods.

Comment: One commenter stated that the collection of a grab sample using Reference Method 8 is less reliable than a continuous on-line analyzer, even though there could be some minor variation in the SO_3 to SO_2 ratio in the stack gas. The commenter believed the use of Method 8 could give unrealistic results where an unscrupulous operator could adjust the operating conditions prior to obtaining the daily sample.

Response: The revised proposed standards specified that the measurement of SO_x emissions from FCCU's using SO_x reduction catalysts would be accomplished by conducting revised Method 8 for one shift each day. The Agency knows of no evidence that the variation in total SO_x through the course of a day is any greater than the variation in the SO_2 to SO_3 ratio in the stack gas and, thus, knows of no evidence for the commenter's remarks.

The EPA assumes that operators will obtain valid samples that are representative of operating conditions at the facility and, therefore, will not alter operating conditions prior to sampling. Such deliberate actions on the part of an owner or operator to obtain unrealistic results clearly constitute circumvention of the standard and are illegal under subpart A, the General Provisions (40 CFR 60.12). Inspection of plant operating data by EPA and State personnel would lead to detection of such alteration of plant operation.

Comment: One commenter questioned whether 160 °C (320 °F) is the appropriate temperature for the heated probe and filter in the revised Method 8. This commenter also asked how the 160 °C (320 °F) temperature at the probe is reached if the stack temperature is hotter, or if it is colder. This commenter stated that if a "probe catch" is a

deposit in the probe, the probe would soon plug up.

Response: The EPA based the selection of the temperature for the heated filter and probe in the revised Method 8 on the temperature specified in the proposed Method 5B and 5F (50 FR 21863, May 29, 1985), which are the methods for sampling particulate matter at FCCU's. The dew point for SO_3 may be higher than the temperature of the heated filter and probe (160 °C). In such instances, the filter would pick up condensed SO_3 (most likely, though, as sulfuric acid mist), thereby leading to a low estimate of SO_3 as measured in the impingers. The Agency believes that this problem is small because the filter would pick up only a small part of the sulfuric acid mist, and the rest would pass through the filter and be collected in the impingers. Thus, the Agency recognizes that, in such situations, a potential bias exists to underestimate emissions, but believes that it is small provided a temperature of 160 °C is maintained.

The materials used (glass and stainless steel) in the probes and filter holders are not subject to corrosion from sulfuric acid. Further, the probes and filter holder are removed each day (after the 3-hour test) for cleaning. In addition, FCCU operators would be required to conduct periodic leak checks. If leaks are detected in the system, or if the sampling system fails, then the system would need to be repaired.

With regard to the stack temperature being different from the probe temperature, if the stack temperature is hotter, there is no problem from an SO_x enforcement standpoint—more SO_x will be trapped in the impingers—and, thus, no temperature adjustment has to be made at the probe. However, if the stack temperature is colder, less SO_x will pass through the filter and a temperature adjustment has to be made. It is common practice to electrically heat the probe to attain the desired temperature.

Finally, with regard to plugging of the probe, as part of normal operating procedures, sampling conducted using revised Method 8 requires that the probe be cleaned out after each run and that the collected sample be discarded from the analysis. This procedure eliminates the potential problem brought up by the commenter.

Comment: One commenter asked why the isopropanol (IPA) impinger was deleted from Method 8.

Response: Method 8 was designed primarily for the separate capture and measurement of sulfuric acid and SO_2. The IPA impinger is used to collect sulfuric acid and SO_3, while the hydrogen peroxide impinger is used to collect SO_2. In the absence of the IPA impinger, the hydrogen peroxide impinger will collect all the SO_x compounds together. The current standards for SO_x reduction catalysts are based on total SO_x; there is no need to separate SO_2 from other sulfur emissions. Therefore, EPA eliminated the IPA impinger from Method 8, the effect of which is to simplify the test procedure, analysis, and calculations.

Feed Sulphur Cutoff

Comment: One commenter felt that the cost of testing the feed sulfur at FCCU's using the alternative feed sulfur cutoff is too expensive to be performed more often than is necessary and suggested that such testing should be required once per week if the feed is previously found to contain below 0.3 percent sulfur in every sample for a week.

Response: For these standards, owners and operators are required to determine compliance on a continuous basis (i.e., on a daily basis). As described in the proposed standards, most refiners manually sample the FCCU fresh feed once per day. Fresh feed sulfur content, however, may change on an hourly basis. Requiring samples to be collected once per hour is not practical using manual sampling techniques. Therefore, the Agency selected a sampling frequency of one sample per 8-hour shift. This frequency would measure major fluctuations in fresh feed sulfur level and is reasonable considering current refinery sampling practices. The sampling program suggested by the commenter would not allow the Agency to be sure that the owner or operator is in fact meeting the standard on a daily basis. Furthermore, past feed usage is not a good indicator of future use; many refiners use different feeds or feed blends for short periods of time. Therefore, the Agency has retained daily testing for feed sulfur content for those operators using this alternative standard.

Compliance

Source Operation During Malfunctions

Comment: One commenter requested that EPA consider establishing standards that allow a certain amount of scrubber downtime without requiring an FCCU shutdown.

Response: The General Provisions in 40 CFR part 60 provide for malfunction of control equipment. "Malfunction" means only sudden and unavoidable failure of air pollution control equipment, process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition, are not considered malfunctions. As stated in § 60.8(c), emissions in excess of a standard due to a malfunction do not represent a violation of the standard. In addition, scrubbers currently applied to FCCU's have demonstrated reliability levels in excess of 95 percent. Thus, it is unnecessary to provide a provision in the standards for scrubber downtime.

Comment: One commenter asked if the affected facility is allowed to continue operating during continuous emission monitor malfunctions.

Response: An affected facility may continue to operate during continuous emission monitor malfunctions. However, as prescribed under 40 CFR 60.7(b) and (c)(3) of the General Provisions, the owner or operator shall maintain records of any periods during which a continuous monitoring system or monitoring device is inoperative, and the quarterly (or semiannual, if no exceedances have occurred during a particular quarter) compliance report shall include the date and time identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks, and the nature of the system repairs or adjustments. It should be noted that failure to properly operate or maintain a continuous monitoring system would be considered as a violation rather than a malfunction (see 40 CFR 60.105 and 60.13).

Changing Compliance Method

Comment: Four commenters wrote that the 90-day notification prior to changing from one method of compliance to another should be modified to allow for an immediate change in emergency cases. Two of these commenters stated that no prior notification should be required provided that records appropriate to demonstrate compliance are maintained, and EPA is notified in writing of the change in compliance method.

Response: The regulation now requires that daily compliance determinations be made for all of the standards. Thus, EPA agrees with the commenters and has removed the requirements for prior notification provided that records appropriate to demonstrate compliance with the regulation are maintained. Additionally, a quarterly report with notification of the change must be submitted to the Administrator in the quarter following such a change even if no violations of a standard have occurred.

Modification/Reconstruction

Comment: One commenter stated that routine maintenance items should not be included in determining if a facility is modified or reconstructed because many of these items are frequently repaired without a resultant emissions increase. Another commenter stated that the affected facility should be redefined to include the fractionator and gas plant because rebuilding work in a single turnaround of an affected facility can commonly exceed 50 percent of the cost of a new unit. Also, the cost of rebuilding work on an affected facility can represent 20 percent of the new unit cost of an entire FCCU. To a refiner, an entire FCCU includes the fractionator and gas plant. These two units usually do not require any significant rebuilding.

Response: The reconstruction provision (40 CFR 60.15) cannot be invoked until 50 percent of the "fixed capital cost" to replace the existing facility with a comparable, new facility has been incurred by the owner or operator. The period in which the FCCU is shut down for maintenance and repair is called a turnaround. During a typical turnaround, regenerator refractory linings, cyclones, and other internal components are inspected and repaired or replaced as required. Based on information from the refining industry, regenerator components have a useful life ranging from 10 years to an indefinite period of time when they are repaired and maintained during turnarounds. The costs used in the summation to determine the total fixed capital cost incurred are those costs incurred to replace components. The costs incurred during maintenance and repair of the existing facility's components (assuming components are not replaced) are not included in the summation of expended fixed capital costs. Thus, there is no need to specifically exempt routine maintenance items from the reconstruction provisions.

The EPA disagrees with the comment that rebuilding work typically can exceed 50 percent of the capital cost of a new affected facility. The EPA examined data from section 114 letter responses, trip reports, literature articles, and companies who provide turnaround services to refineries. These data led EPA to conclude that routine rebuilding is less than 50 percent of the cost of a new affected facility. As discussed above, this is because regenerator components are typically repaired rather than replaced during a turnaround. If several major changes, such as increasing the FCCU capacity, changing to a heavier or more sour crude oil, or converting to HTR, occur during a single turnaround, the cost may approach or surpass the 50 percent point. Such major changes are not, however, a typical turnaround occurrence. The possibility that rebuilding work may exceed 50 percent of the cost of a new unit is an inadequate reason to broaden the definition of the affected facility (i.e., restrict invoking the reconstruction provision).

The modification provision (40 CFR 60.14) is invoked when any physical or operational change to an existing facility results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies. As the actions described by the commenter do not increase emissions, the modification provision would not be invoked. In addition, paragraph (f) of § 60.14 specifies that routine maintenance, repair, and replacement by themselves, shall not be considered modifications.

Comment: One commenter stated that a 1-calendar year or a 12-month "inclusion period" for reconstruction is more logical than a 2-year period. A refiner with a normal 2-year turnaround could be affected by the reconstruction provisions of the standards if a shutdown began 1 or 2 months prematurely. A refiner would not install a sizeable process modification during a routine shutdown period due to the excessive downtime incurred.

Response: The EPA considered again the 2-year period and concluded that a 1-calendar year or a 12-month "inclusion period" for reconstruction is not more logical than a 2-year period for FCCU's. Information from industry and literature (see proposal BID, p. 5–3) indicates that the normal turnaround schedule for revamping FCCU regenerators is every 3 years (i.e., a maximum of one turnaround would occur during each 2-year period of operation). A process unit turnaround typically includes maintenance and repair items that do not qualify as fixed capital costs and therefore, a turnaround is not likely to be a "reconstruction." The Agency also does not expect that the 2-year period will alter decisions by an FCCU's owner or operator on when to replace equipment; that is, the FCCU owner or operator is not likely to prolong the useful life of the regenerator components with the intent of avoiding the NSPS. Therefore, for this particular NSPS, EPA believes that the 2-year period provides a reasonable, objective method of determining whether an owner or operator of an FCCU regenerator is actually "proposing" extensive component replacement, within the original intent of § 60.15.

Recordkeeping and Reporting

Comment: The OMB commented that quarterly reporting was too frequent, and that semiannual reporting would allow the Agency to obtain the necessary information.

Response: For FCCU's, EPA has concluded that quarterly reporting (or semiannual reporting if no exceedances have occurred during a particular quarter) is the appropriate reporting frequency for the following reasons. The major reason is that the reports contain direct compliance information rather than indicators of the source's performance. Therefore, enforcement action can be taken quickly because no further testing is necessary for documentation. The FCCU is one of several significant emission sources in petroleum refineries, so periods of excess emissions could have a significant impact on the environment. This is particularly true because refineries generally are located in clusters near industrial, urban, populated, nonattainment areas. Because the refinery generally does not save money by operating the control techniques correctly and the pollutants cannot be recovered for resale, there is little incentive for this source category to be self-regulated. Therefore, to ensure that sources are not out of compliance for long periods of time during which significant environmental impacts could occur, quarterly reporting is appropriate for quarters when facilities have had a period when the standard has been exceeded. In addition, the amount of data to be provided in these cases is reasonable. Sources complying with the proposed revised standard would need to supply only a semiannual negative declaration statement. Only noncompliant sources would be required to provide additional information in the quarterly compliance reports.

VIII. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the

contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

The effective date of this regulation is August 17, 1989. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal (January 17, 1984).

As prescribed by section 111, the promulgation of these standards was preceded by the Administrator's determination that petroleum refineries contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards and the promulgated standards.

During the first 3 years that the proposed standards would be in effect, the public reporting burden for collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated to be 4,360 averaged annual hours. The estimated burden for a typical respondent (including initial reports) ranges from about 660 hours per year for complying with the feed sulfur standard to about 980 hours per year for complying with the standard for add-on controls. The resources required by EPA and State and local agencies to process the reports and to maintain records for the first 3 years would be about 0.15 person-years per year.

Information collection requirements associated with this regulation have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0061.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The fifth-year annualized costs of the standards are expected to be $45.8 million for the projected 17 newly constructed, modified, and reconstructed FCCU regenerators that could be affected by the standards during the first 5 years after the effective date of the standards. The economic analysis shows that the standards would not have a significant impact on petroleum refineries if all FCCU owners or operators subject to these standards used scrubbers. The standards would have a small effect on profitability (a profit decrease of 0.8 percent). The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Petroleum refineries, Reporting and recordkeeping requirements.

Dated: July 27, 1989.

William K. Reilly,

Administrator.

40 CFR part 60 is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

2. The table of contents for subpart J is revised to read as follows:

Subpart J—Standards of Performance for Petroleum Refineries

Sec.
60.100 Applicability, designation of affected facility, and reconstruction.
60.101 Definitions.
60.102 Standard for particulate matter.
60.103 Standard for carbon monoxide.
60.104 Standards for sulfur oxides.
60.105 Monitoring of emissions and operations.
60.106 Test methods and procedures.
60.107 Reporting and recordkeeping requirements.
60.108 Performance test and compliance provisions.
60.109 Delegation of authority.

3. Section 60.17 of subpart A—General Provisions is amended by adding paragraphs (a) (56), (57), (58), and (59) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(a) * * *

(56) ASTM D129–64 (Reapproved 1978), Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved August 17, 1989, for § 60.106(h)(2).

(57) ASTM D1552–83, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved August 17, 1989, for § 60.106(h)(2).

(58) ASTM D2622–87, Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry, IBR approved August 17, 1989, for § 60.106(h)(2).

(59) ASTM D1266–87, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved August 17, 1989, for § 60.106(h)(2).

* * * * *

4. Subpart J, § 60.100 is amended by revising the section heading and paragraph (b) and by adding paragraphs (c), (d), and (e) to read as follows:

§ 60.100 Applicability, designation of affected facility, and reconstruction.

* * * * *

(b) Any fluid catalytic cracking unit catalyst regenerator or fuel gas combustion device under paragraph (a) of this section which commences construction or modification after June 11, 1973, or any Claus sulfur recovery

plant under paragraph (a) of this section which commences construction or modification after October 4, 1976, is subject to the requirements of this subpart except as provided under paragraphs (c) and (d) of this section.

(c) Any fluid catalytic cracking unit catalyst regenerator under paragraph (b) of this section which commences construction or modification on or before January 17, 1984, is exempted from § 60.104(b).

(d) Any fluid catalytic cracking unit in which a contact material reacts with petroleum derivatives to improve feedstock quality and in which the contact material is regenerated by burning off coke and/or other deposits and that commences construction or modification on or before January 17, 1984, is exempt from this subpart.

(e) For purposes of this subpart, under § 60.15, the "fixed capital cost of the new components" includes the fixed capital cost of all depreciable components which are or will be replaced pursuant to all continuous programs of component replacement which are commenced within any 2-year period following January 17, 1984. For purposes of this paragraph, "commenced" means that an owner or operator has undertaken a continuous program of component replacement or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of component replacement.

5. Section 60.101 is amended by adding paragraphs (m), (n), (o), (p), and (q) to read as follows:

§ 60.101 Definitions.

* * * * *

(m) *Fluid catalytic cracking unit* means a refinery process unit in which petroleum derivatives are continuously charged; hydrocarbon molecules in the presence of a catalyst suspended in a fluidized bed are fractured into smaller molecules, or react with a contact material suspended in a fluidized bed to improve feedstock quality for additional processing; and the catalyst or contact material is continuously regenerated by burning off coke and other deposits. The unit includes the riser, reactor, regenerator, air blowers, spent catalyst or contact material stripper, catalyst or contact material recovery equipment, and regenerator equipment for controlling air pollutant emissions and for heat recovery.

(n) *Fluid catalytic cracking unit catalyst regenerator* means one or more regenerators (multiple regenerators) which comprise that portion of the fluid catalytic cracking unit in which coke burn-off and catalyst or contact material regeneration occurs, and includes the regenerator combustion air blower(s).

(o) *Fresh feed* means any petroleum derivative feedstock stream charged directly into the riser or reactor of a fluid catalytic cracking unit except for petroleum derivatives recycled within the fluid catalytic cracking unit, fractionator, or gas recovery unit.

(p) *Contact material* means any substance formulated to remove metals, sulfur, nitrogen, or any other contaminant from petroleum derivatives.

(q) *Valid day* means a 24-hour period in which at least 18 valid hours of data are obtained. A "valid hour" is one in which at least 2 valid data points are obtained.

6. Section 60.102 is amended by adding introductory text to the section and revising the introductory text of paragraph (a) to read as follows:

§ 60.102 Standard for particulate matter.

Each owner or operator of any fluid catalytic cracking unit catalyst regenerator that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test, required by § 60.8, is completed, but not later than 60 days after achieving the maximum production rate at which the fluid catalytic cracking unit catalyst regenerator will be operated, or 180 days after initial startup, whichever comes first.

(a) No owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator:

* * * * *

7. Section 60.103 is revised to read as follows:

§ 60.103 Standard for carbon monoxide.

Each owner or operator of any fluid catalytic cracking unit catalyst regenerator that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test, required by § 60.8, is completed, but not later than 60 days after achieving the maximum production rate at which the fluid catalytic cracking unit catalyst regenerator will be operated, or 180 days after initial startup, whichever comes first.

(a) No owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator any gases which contain carbon monoxide in excess of 0.050 percent by volume.

8. Section 60.104 is amended by revising the section heading, adding introductory text to the section, revising the introductory text of paragraph (a), and adding paragraphs (b), (c), and (d) to read as follows:

§ 60.104 Standards for sulfur oxides.

Each owner or operator that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test, required by § 60.8, is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after initial startup, whichever comes first.

(a) No owner or operator subject to the provisions of this subpart shall:

* * * * *

(b) Each owner or operator that is subject to the provisions of this subpart shall comply with one of the following conditions for each affected fluid catalytic cracking unit catalyst regenerator:

(1) With an add-on control device, reduce sulfur dioxide emissions to the atmosphere by 90 percent or maintain sulfur dioxide emissions to the atmosphere less than or equal to 50 ppm by volume (vppm), whichever is less stringent; or

(2) Without the use of an add-on control device, maintain sulfur oxides emissions calculated as sulfur dioxide to the atmosphere less than or equal to 9.8 kg/1,000 kg coke burn-off; or

(3) Process in the fluid catalytic cracking unit fresh feed that has a total sulfur content no greater than 0.30 percent by weight.

(c) Compliance with paragraph (b)(1), (b)(2), or (b)(3) of this section is determined daily on a 7-day rolling average basis using the appropriate procedures outlined in § 60.106.

(d) A minimum of 22 valid days of data shall be obtained every 30 rolling successive calendar days when complying with paragraph (b)(1) of this section.

9. Section 60.105 is amended by revising the section heading, revising the introductory text of paragraph (a); adding and reserving paragraph (a)(7), and adding paragraphs (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), and (a)(14); revising paragraph (c); and removing paragraph (e)(4) to read as follows:

§ 60.105 Monitoring of emissions and operations.

(a) Continuous monitoring systems shall be installed, calibrated, maintained, and operated by the owner or operator subject to the provisions of this subpart as follows:

* * * * *

(7) [Reserved]

(8) An instrument for continuously monitoring and recording concentrations of sulfur dioxide in the gases at both the inlet and outlet of the sulfur dioxide control device from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator seeks to comply with § 60.104(b)(1). The span value of the inlet monitor shall be set at 125 percent of the maximum estimated hourly potential sulfur dioxide emission concentration entering the control device, and the span value of the outlet monitor shall be set at 50 percent of the maximum estimated hourly potential sulfur dioxide emission concentration entering the control device.

(9) An instrument for continuously monitoring and recording concentrations of sulfur dioxide in the gases discharged into the atmosphere from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator seeks to comply specifically with the 50 vppm emission limit under § 60.104(b)(1). The span value of the monitor shall be set at 50 percent of the maximum hourly potential sulfur dioxide emission concentration entering the control device.

(10) An instrument for continuously monitoring and recording concentrations of oxygen (O_2) in the gases at both the inlet and outlet of the sulfur dioxide control device (or the outlet only if specifically complying with the 50 vppm standard) from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator has elected to comply with § 60.104(b)(1). The span of this continuous monitoring system shall be set at 10 percent.

(11) The continuous monitoring systems under paragraphs (a)(8), (a)(9), and (a)(10) of this section are operated and data recorded during all periods of operation of the affected facility including periods of startup, shutdown, or malfunction, except for continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments.

(12) The owner or operator shall follow appendix F, Procedure 1, including quarterly accuracy determinations and daily calibration drift tests, for the continuous monitoring systems under paragraphs (a)(8), (a)(9), and (a)(10) of this section.

(13) When seeking to comply with § 60.104(b)(1), when emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks and zero and span adjustments, emission data will be obtained by using one of the following methods to provide emission data for a minimum of 18 hours per day in at least 22 out of 30 rolling successive calendar days.

(i) The reference methods as described in paragraph (a)(14) of this section;

(ii) A spare continuous monitoring system; or

(iii) Other monitoring systems as approved by the Administrator.

(14) Reference methods used to supplement continuous monitoring system data to meet the minimum data requirements in paragraph § 60.104(d) will be used as described below or as otherwise approved by the Administrator.

(i) Reference Methods 6, 6B, or 8 are used. The sampling location(s) are the same as those specified for the continuous emission monitoring system.

(ii) For Method 6, the minimum sampling time is 20 minutes and the minimum sampling volume is 0.02 dscm (0.71 dscf) for each sample. Samples are taken at approximately 60-minute intervals. Each sample represents a 1-hour average. A minimum of 18 valid samples is required to obtain one valid day of data.

(iii) For Method 6B, collection of a sample representing a minimum of 18 hours is required to obtain one valid day of data.

(iv) For Method 8, the procedures as outlined in § 60.106. The equivalent of 18 hours of sampling is required to obtain one valid day of data.

* * * * *

(c) The average coke burn-off rate (thousands of kilograms per hour) and hours of operation shall be recorded daily for any fluid catalytic cracking unit catalyst regenerator subject to § 60.102, § 60.103, or § 60.104(b)(2).

* * * * *

10. Section 60.106 is amended by revising the units in the definition of R_c in paragraph (a)(7) and adding paragraphs (e), (f), (g), and (h) to read as follows:

§ 60.106 Test methods and procedures.

(a) * * *

(7) * * *

R_c = coke burn-off rate, kg/hr (English units: 1000 lb/hr).

* * * * *

(e) Each performance test conducted for the purpose of determining compliance under § 60.104(b) shall consist of all testing performed over a 7-day period using the applicable test methods and procedures specified in this section. To determine compliance, the arithmetic mean of the results of all the tests shall be compared with the applicable standard.

(f) For the purpose of determining compliance with § 60.104(b)(1), the following calculation procedures shall be used:

(1) Calculate each 1-hour average concentration (dry, zero percent oxygen, vppm) of sulfur dioxide at both the inlet and the outlet to the add-on control device as specified in § 60.13(h). These calculations are made using the emission data collected under § 60.105(a).

(2) Calculate a 7-day average (arithmetic mean) concentration of sulfur dioxide for the inlet and for the outlet to the add-on control device using all of the 1-hour average concentration values obtained during seven successive 24-hour periods.

(3) Calculate the 7-day average percent reduction using the following equation:

$$R_{SO_2} = 100(C_{SO_2(i)} - C_{SO_2(o)})/C_{SO_2(i)}$$

where:

R_{SO_2} = 7-day average sulfur dioxide emission reduction, percent

$C_{SO_2(i)}$ = sulfur dioxide emission concentration determined in § 60.106(f)(2) at the inlet to the add-on control device, vppm

$C_{SO_2(o)}$ = sulfur dioxide emission concentration determined in § 60.106(f)(2) at the outlet to the add-on control device, vppm

100 = conversion factor, decimal to percent

(4) Outlet concentrations of sulfur dioxide from the add-on control device for compliance with the 50 vppm standard, reported on a dry, O_2-free basis, shall be calculated using the procedures outlined in § 60.106(f) (1) and (2) above, but for the outlet monitor only.

(5) If supplemental sampling data are used for determining the 7-day averages under paragraph (f) of this section and such data are not hourly averages, then the value obtained for each supplemental sample shall be assumed to represent the hourly average for each hour over which the sample was obtained.

(6) For the purpose of adjusting pollutant concentrations to zero percent oxygen, the following equation shall be used:

$$C_{adj} = C_{meas}[20.9_c/(20.9 - \%O_2)]$$

where:

C_{adj} = pollutant concentration adjusted to zero percent oxygen, ppm or g/dscm
C_{meas} = pollutant concentration measured on a dry basis, ppm or g/dscm
20.9_c = 20.9 percent oxygen—0.0 percent oxygen (defined oxygen correction basis), percent

20.9 = oxygen concentration in air, percent
$\%O_2$ = oxygen concentration measured on a dry basis, percent

(g) For the purpose of determining compliance with § 60.104(b)(2), the following reference methods and calculation procedures shall be used except as provided in paragraph (g)(12) of this section:

(1) One 3-hour test shall be performed each day.

(2) For gases released to the atmosphere from the fluid catalytic cracking unit catalyst regenerator:

(i) Method 8 as modified in § 60.106(g)(3) for the concentration of sulfur oxides calculated as sulfur dioxide and moisture content,

(ii) Method 1 for sample and velocity traverses,

(iii) Method 2 calculation procedures (data obtained from Methods 3 and 8) for velocity and volumetric flow rate, and

(iv) Method 3 for gas analysis.

(3) Method 8 shall be modified by the insertion of a heated glass fiber filter between the probe and first impinger. The probe liner and glass fiber filter temperature shall be maintained above 160°C (320°F). The isopropanol impinger shall be eliminated. Sample recovery procedures described in Method 8 for container No. 1 shall be eliminated. The heated glass fiber filter also shall be excluded; however, rinsing of all connecting glassware after the heated glass fiber filter shall be retained and included in container No. 2. Sampled volume shall be at least 1 dscm.

(4) For Method 3, the integrated sampling technique shall be used.

(5) Sampling time for each run shall be at least 3 hours.

(6) All testing shall be performed at the same location. Where the gases discharged by the fluid catalytic cracking unit catalyst regenerator pass through an incinerator-waste heat boiler in which auxiliary or supplemental gaseous, liquid, or solid fossil fuel is burned, testing shall be conducted at a point between the regenerator outlet and the incinerator-waste heat boiler. An alternative sampling location after the waste heat boiler may be used if alternative coke burn-off rate equations, and, if requested, auxiliary/supplemental fuel SO_x credits, have been submitted to and approved by the Administrator prior to sampling.

(7) Coke burn-off rate shall be determined using the procedures specified under paragraph (a)(4) of this section, unless paragraph (g)(6) of this section applies.

(8) Calculate the concentration of sulfur oxides as sulfur dioxide using equation 8-3 in Section 6.5 of Method 8 to calculate and report the total concentration of sulfur oxides as sulfur dioxide (C_{SO_x}).

(9) Sulfur oxides emission rate calculated as sulfur dioxide shall be determined for each test run by the following equation:

$$E_{SO_x} = C_{SO_x} Q_{sd} / 1{,}000$$

where:

E_{SO_x} = sulfur oxides emission rate calculated as sulfur dioxide, kg/hr
C_{SO_x} = sulfur oxides emission concentration calculated as sulfur dioxide, g/dscm
Q_{sd} = dry volumetric stack gas flow rate corrected to standard conditions, dscm/hr
1,000 = conversion factor, g to kg

(10) Sulfur oxides emissions calculated as sulfur dioxide per 1,000 kg coke burn-off in the fluid catalytic cracking unit catalyst regenerator shall be determined for each test run by the following equation:

$$R_{SO_x} = (E_{SO_x} / R_C)$$

where:

R_{SO_x} = sulfur oxides emissions calculated as sulfur dioxide, kg/1,000 kg coke burn-off
E_{SO_x} = sulfur oxides emission rate calculated as sulfur dioxide, kg/hr
R_c = coke burn-off rate, 1,000 kg/hr

(11) Calculate the 7-day average sulfur oxides emission rate as sulfur dioxide per 1,000 kg of coke burn-off by dividing the sum of the individual daily rates by the number of daily rates summed.

(12) An owner or operator may, upon approval by the Administrator, use an alternative method for determining compliance with § 60.104(b)(2), as provided in § 60.8(b). Any requests for approval must include data to demonstrate to the Administrator that the alternative method would produce results adequate for the determination of compliance.

(h) For the purpose of determining compliance with § 60.104(b)(3), the following analytical methods and calculation procedures shall be used:

(1) One fresh feed sample shall be collected once per 8-hour period.

(2) Fresh feed samples shall be analyzed separately by using any one of the following applicable analytical test methods: ASTM D129-64 (Reapproved 1978), ASTM D1552-83, ASTM D2622-87, or ASTM D1266-87. (These methods are incorporated by reference: see § 60.17.) The applicable range of some of these ASTM methods is not adequate to measure the levels of sulfur in some fresh feed samples. Dilution of samples prior to analysis with verification of the dilution ratio is acceptable upon prior approval of the Administrator.

(3) If a fresh feed sample cannot be collected at a single location, then the fresh feed sulfur content shall be determined as follows:

(i) Individual samples shall be collected once per 8-hour period for each separate fresh feed stream charged directly into the riser or reactor of the fluid catalytic cracking unit. For each sample location the fresh feed volumetric flow rate at the time of collecting the fresh feed sample shall be measured and recorded. The same method for measuring volumetric flow rate shall be used at all locations.

(ii) Each fresh feed sample shall be analyzed separately using the methods specified under paragraph (h)(2) of this section.

(iii) Fresh feed sulfur content shall be calculated for each 8-hour period using the following equation:

$$S_f = \sum_{i=1}^{n} \frac{S_i Q_i}{Q_f}$$

where:

S_f = fresh feed sulfur content expressed in percent by weight of fresh feed.
n = number of separate fresh feed streams charged directly to the riser or reactor of the fluid catalytic cracking unit.
Q_f = total volumetric flow rate of fresh feed charged to the fluid catalytic cracking unit.
S_i = fresh feed sulfur content expressed in percent by weight of fresh feed for the "ith" sampling location.
Q_i = volumetric flow rate of fresh feed stream for the "ith" sampling location.

(4) Calculate a 7-day average (arithmetic mean) sulfur content of the fresh feed using all of the fresh feed sulfur content values obtained during seven successive 24-hour periods.

11. Section 60.107 is added to subpart J to read as follows:

§ 60.107 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to § 60.104(b) shall notify the Administrator of the specific provisions of § 60.104(b) with which the owner or operator seeks to comply. Notification shall be submitted with the notification of initial startup required by § 60.7(a)(3). If an owner or operator elects at a later date to comply with an alternative provision of § 60.104(b), then the Administrator shall be notified by the

owner or operator in the quarterly (or semiannual) report described in paragraphs (c) and (d) of this section for the quarter during which the change occurred.

(b) Each owner or operator subject to § 60.104(b) shall record and maintain the following information:

(1) If subject to § 60.104(b)(1),

(i) All data and calibrations from continuous monitoring systems located at the inlet and outlet to the control device, including the results of the daily drift tests and quarterly accuracy assessments required under appendix F, Procedure 1;

(ii) Measurements obtained by supplemental sampling (refer to § 60.105(a)(13) and (a)(14)) for meeting minimum data requirements; and

(iii) The written procedures for the quality control program required by appendix F, Procedure 1.

(2) If subject to § 60.104(b)(2), measurements obtained in the daily Method 8 testing, or those obtained by alternative measurement methods, if § 60.106(g)(12) applies.

(3) If subject to § 60.104(b)(3), data obtained from the daily feed sulfur tests.

(4) Each 7-day rolling average compliance determination.

(c) Each owner or operator subject to § 60.104(b) shall submit a report each quarter except as provided by paragraph (d) of this section. The following information shall be contained in each quarterly report:

(1) Any 7-day period during which:

(i) The average percent reduction and average concentration of sulfur dioxide on a dry, O_2-free basis in the gases discharged to the atmosphere from any fluid cracking unit catalyst regenerator for which the owner or operator seeks to comply with § 60.104(b)(1) is below 90 percent and above 50 vppm, as measured by the continuous monitoring system prescribed under § 60.105(a)(8), or above 50 vppm, as measured by the outlet continuous monitoring system prescribed under § 60.105(a)(9). The average percent reduction and average sulfur dioxide concentration shall be determined using the procedures specified under § 60.106(f);

(ii) The average emission rate of sulfur dioxide in the gases discharged to the atmosphere from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator seeks to comply with § 60.104(b)(2) exceeds 9.8 kg SO_x per 1,000 kg coke burn-off, as measured by the daily testing prescribed under § 60.106(g). The average emission rate shall be determined using the procedures specified under § 60.106(g); and

(iii) The average sulfur content of the fresh feed for which the owner or operator seeks to comply with § 60.104(b)(3) exceeds 0.30 percent by weight. The fresh feed sulfur content, a 7-day rolling average, shall be determined using the procedures specified under § 60.106(h).

(2) Any 30-day period in which the minimum data requirements specified in § 60.104(d) are not obtained.

(3) For each 7-day period during which an exceedance has occurred as defined in paragraphs (c)(1)(i) through (c)(1)(iii) and (c)(2) of this section:

(i) The date that the exceedance occurred;

(ii) An explanation of the exceedance;

(iii) Whether the exceedance was concurrent with a startup, shutdown, or malfunction of the fluid catalytic cracking unit or control system; and

(iv) A description of the corrective action taken, if any.

(4) If subject to § 60.104(b)(1),

(i) The dates for which and brief explanations as to why fewer than 18 valid hours of data were obtained for the inlet continuous monitoring system;

(ii) The dates for which and brief explanations as to why fewer than 18 valid hours of data were obtained for the outlet continuous monitoring system;

(iii) Identification of times when hourly averages have been obtained based on manual sampling methods;

(iv) Identification of the times when the pollutant concentration exceeded full span of the continuous monitoring system; and

(v) Description of any modifications to the continuous monitoring system that could affect the ability of the continuous monitoring system to comply with Performance Specifications 2 or 3.

(vi) Results of daily drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1.

(5) If subject to § 60.104(b)(2), for each day in which a Method 8 sample result was not obtained, the date for which and brief explanation as to why a Method 8 sample result was not obtained, for approval by the Administrator.

(6) If subject to § 60.104(b)(3), for each 8-hour shift in which a feed sulfur measurement was not obtained, the date for which and brief explanation as to why a feed sulfur measurement was not obtained, for approval by the Administrator.

(d) If no exceedances (as defined in paragraphs (c)(1)(i) through (c)(1)(iii) and (c)(2) of this section) occur in a quarter, and if the owner or operator has not changed the standard under § 60.104(b) under which compliance is obtained, then the owner or operator may submit a semiannual report in which a statement is included that states that no exceedances had occurred during the affected quarter(s). If the owner or operator elects to comply with an alternative provision of § 60.104(b), a quarterly report must be submitted for the quarter during which a change occurred.

(e) For any periods for which sulfur dioxide or oxides emissions data are not available, the owner or operator of the affected facility shall submit a signed statement indicating if any changes were made in operation of the emission control system during the period of data unavailability which could affect the ability of the system to meet the applicable emission limit. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability.

(f) The owner or operator of the affected facility shall submit a signed statement certifying the accuracy and completeness of the information contained in the report.

(Approved by the Office of Management and Budget under control number 2060–0061)

12. Section 60.108 is added to subpart J to read as follows:

§ 60.108 Performance test and compliance provisions.

(a) Section 60.8(d) shall apply to the initial performance test specified under paragraph (c) of this section, but not to the daily performance tests required thereafter as specified in § 60.108(d). Section 60.8(f) does not apply when determining compliance with the standards specified under § 60.104(b). Performance tests conducted for the purpose of determining compliance under § 60.104(b) shall be conducted according to the applicable procedures specified under § 60.106.

(b) Owners or operators who seek to comply with § 60.104(b)(3) shall meet that standard at all times, including periods of startup, shutdown, and malfunctions.

(c) The initial performance test shall consist of the initial 7-day average calculated for compliance with § 60.104(b)(1), (b)(2), or (b)(3).

(d) After conducting the initial performance test prescribed under § 60.8, the owner or operator of a fluid catalytic cracking unit catalyst regenerator subject to § 60.104(b) shall conduct a performance test for each successive 24-hour period thereafter. The daily performance tests shall be

conducted according to the appropriate procedures specified under § 60.106. In the event that a sample collected under § 60.106(g) or (h) is accidentally lost or conditions occur in which one of the samples must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operators' control, compliance may be determined using available data for the 7-day period.

(e) Each owner or operator subject to § 60.104(b) who has demonstrated compliance with one of the provisions of § 60.104(b) but at a later date seeks to comply with another of the provisions of § 60.104(b) shall begin conducting daily performance tests as specified under paragraph (d) of this section immediately upon electing to become subject to one of the other provisions of § 60.104(b). The owner or operator shall furnish the Administrator a written notification of the change in a quarterly report that must be submitted for the quarter in which the change occurred.

13. Section 60.109 is added to subpart J to read as follows:

§ 60.109 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which shall not be delegated to States:

(1) Section 60.105(a)(13)(iii),

(2) Section 60.106(g)(12).

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Part III

Environmental Protection Agency

40 CFR Part 792

Toxic Substances Control Act (TSCA); Good Laboratory Practice Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 792

[OPTS-46016A; FRL-3518-3]

RIN 2070-AB65

Toxic Substances Control Act (TSCA); Good Laboratory Practice Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule to amend the TSCA Good Laboratory Practice (GLP) standards to incorporate many of the changes made by the Food and Drug Administration (FDA) to its GLP regulations and to expand the scope of the TSCA GLP standards to apply to testing conducted in the field under TSCA. EPA is amending these regulations to ensure the quality and integrity of data generated from such studies.

EFFECTIVE DATE: September 18, 1989.

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I. Introduction

EPA is amending the TSCA Good Laboratory Practice standards (40 CFR part 792) to incorporate many of the changes made by FDA to its GLP regulations and to expand the scope of TSCA GLP standards.

Public reporting for this collection of information is estimated to be negligible, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20503.

A. Legal Authority

On November 29, 1983 (48 FR 53922), EPA promulgated the GLP standards under the authority of TSCA section 4 (90 Stat. 2006, 15 U.S.C. 2603). Section 4(a) of TSCA authorizes the EPA Administrator to require, by rule, that manufacturers (including importers) and processors of identified chemical substances and mixtures (chemicals) test such chemicals if certain findings are made. Section 4(b)(1) of TSCA specifies that each test rule shall include standards for the development of test data. These standards are defined in section 3(12) of TSCA to mean a prescription of—

(A) the—

(i) health and environmental effects, and

(ii) information relating to the toxicity, persistence, and other characteristics which affect health and the environment, for which test data for a chemical substance or mixture are to be developed and any analysis that is to be performed on such data, and

(B) to the extent necessary to assure that data respecting such effects and characteristics are reliable and adequate—

(i) the manner in which such data are to be developed,

(ii) the specification of any test protocol or methodology to be employed in the development of such data, and

(iii) such other requirements as are necessary to provide such assurance.

In summary, the specific authority to issue the GLP standards is provided by section 4(b)(1) of TSCA, which is further explained by the definitions in sections 3(12)(B)(i) and 3(12)(B)(iii).

In addition, EPA also requires sponsors to utilize these GLP standards when conducting testing under TSCA section 4 testing consent agreements and will include provisions to adhere to these GLP standards in those agreements (see 40 CFR 790.60(a)(7)). Also, it is EPA's policy that all data developed as a result of rules or orders under section 5 of TSCA should be in accordance with the GLP standards. If data developed under section 5 of TSCA are not generated in accordance with the GLP standards, EPA may elect to consider such data insufficient to evaluate the health effects, environmental effects, and fate of the chemical(s).

B. Background

EPA originally published TSCA GLP standards in the **Federal Register** of November 29, 1983 (48 FR 53922), which were codified as 40 CFR part 792. At the same time, EPA published GLP standards applicable to testing under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 48 FR 53963, 40 CFR part 160). These regulations were promulgated in response to investigations by EPA and FDA during the mid-1970s which revealed that some studies submitted to the Agencies had not been conducted in accordance with acceptable laboratory practices. Some studies had been conducted so poorly that the resulting data could not be relied upon in EPA's regulatory decision-making process. For instance, some studies had been submitted which did not adhere to specified protocols, were conducted by underqualified personnel and supervisors, or were not adequately monitored by study sponsors. In some cases, results were selectively reported, underreported, or fraudulently reported. In addition, it was discovered that some testing facilities displayed poor animal care procedures and inadequate record-keeping techniques. The TSCA GLP standards specify minimum practices and procedures which must be followed in order to ensure the quality and integrity of data submitted in accordance with TSCA section 4 requirements. The 1983 TSCA GLP standards also established a policy that persons should comply with the GLP standards when submitting data in response to rules and orders issued under section 5 of TSCA, and when submitting data to EPA voluntarily.

When EPA published its final TSCA and FIFRA GLP standards in the **Federal Register** of November 29, 1983, the Agency sought to harmonize the requirements and language with those regulations promulgated by the FDA in the **Federal Register** of December 22, 1978 (43 FR 60013), and codified as 21 CFR part 58. Differences between the two Agencies' current GLP regulations exist only to the extent necessary to reflect the Agencies' different statutory responsibilities under TSCA, FIFRA, and the Federal Food, Drug and Cosmetic Act (FFDCA). Similar to the FDA GLP regulations, the FIFRA and TSCA GLP regulations delineate standards for studies designed to determine the health effects of a test substance; however, the TSCA GLP standards also contain provisions related to environmental testing (i.e., ecological effects and chemical fate).

Compliance with EPA's GLP regulations has been monitored through a program of laboratory inspections and study audits coordinated between EPA and FDA. Under an Interagency Agreement originated in 1978, FDA carries out GLP inspections at laboratories which conduct health effects testing. EPA primarily performs GLP inspections for environmental laboratories and conducts data audits for health effects and environmental studies.

After a thorough review of its GLP regulations and compliance program, FDA concluded that some of the provisions of the GLPs needed to be clarified, amended, or deleted in order to reduce the regulatory burden on testing facilities. Accordingly, FDA revised its GLP regulations in the Federal Register of September 4, 1987 (52 FR 33768). These GLP standards are intended to simplify the regulations without compromising study integrity.

EPA agrees with FDA that many provisions of the GLP regulations can be streamlined without compromising the goals of the GLP standards. Therefore, EPA is amending the TSCA GLP standards to incorporate many of the changes made by FDA to its GLP regulations. In addition, EPA is expanding the scope of the TSCA GLP standards to cover testing wherever it is conducted (e.g., field testing). Elsewhere in this Federal Register, EPA is finalizing similar changes to the FIFRA GLP standards.

C. Consistency With FDA GLP Regulations

It is EPA's policy to minimize the regulatory burden on the public which might arise from conflicting requirements which could be promulgated under different regulatory authorities. In keeping with this policy, the final 1983 TSCA GLP standards, 40 CFR part 792, followed the format and, with few exceptions, the wording of FDA's final GLP regulations, 21 CFR part 58. Differences between the EPA and FDA GLP regulations were based upon varying needs and responsibilities under each Agency's regulatory statutes. This revision to the TSCA GLP standards follows this same policy by conforming to many of the changes FDA made to its GLP regulations, published in the Federal Register of September 4, 1987 (52 FR 33768). EPA has varied from FDA's revised GLP regulations only when necessary due to EPA's statutory responsibilities. The most significant differences between the EPA changes and the revised FDA GLP regulations are the scope of the testing and test systems affected.

As in the 1983 TSCA GLP standards, the revisions to the TSCA GLP standards vary from the FDA GLP regulations in that the TSCA GLP standards incorporate provisions for environmental testing (EPA is extending the FIFRA GLP standards to extend to environmental studies as well). Environmental studies include ecological effects and chemical fate studies. Ecological effects studies are those performed for development of information on non-human toxicity and potential ecological impact of chemicals and their degradation products. Chemical fate studies are studies performed to characterize physical, chemical, and persistence properties of a substance in order to evaluate the transport and transformation of the substance in the environment.

To ensure the quality and integrity of all data generated from environmental studies, the current TSCA GLP standards contain requirements within 40 CFR part 792, subpart L applicable to testing plants, microbial organisms, aquatic organisms, amphibians, reptiles, and birds, where appropriate.

These requirements include provisions for care, care facilities, and supply facilities for the various test systems used in environmental testing. As a means of simplifying the regulations, EPA is changing the requirements currently found within subpart L by merging them into subparts A through J of the TSCA GLP standards (40 CFR part 792, subparts A through J). Accordingly, § 792.43 Animal care facilities, § 792.45 Animal supply facilities, and § 792.90 Animal care, incorporate the provisions relating to the care of test systems, test system care facilities, and test system supply facilities from § 792.228 in subpart L of the 1983 GLP standards. The expanded sections are retitled in the revision as follows: § 792.43 Test system care facilities, § 792.45 Test system supply facilities, and § 792.90 Animal and other test system care. Further, in most instances, EPA is replacing the term "animal," used in the 1983 EPA and 1978 FDA GLP regulations, with the broader term "test system." Specifically, this change occurs in §§ 792.43, 792.45, 792.81, 792.90, and 792.120. These changes are further discussed in Unit II of this preamble.

EPA's TSCA GLP standards also vary from FDA's in their coverage of testing conducted in the field. To ensure the quality and integrity of data submitted to the Agency, EPA believes that GLP standards must apply whenever data collection occurs. Because many of the test data required by EPA are developed in the field, or more accurately in outdoor laboratories (ground water studies, air monitoring studies, degradation in soil, etc.), EPA is amending the GLP standards to include field testing within the scope of these regulations.

The remaining differences between the EPA and FDA GLP regulations are described in the preamble to this final rule and the preamble to the TSCA GLP standards, published in the Federal Register of November 29, 1983 (48 FR 53922). EPA has coordinated this final rule with FDA and has considered public comments received on the December 28, 1987 proposal (52 FR 48933).

D. Publication of the Complete Rule

The entire TSCA GLP rule is published in this notice to simplify interpretation and facilitate the use of this notice by the regulated community. The following lists the sections of 40 CFR part 792 that were changed from the 1983 rule:

Section changed	Changes
792.1	(a) and (c), revised.
792.3	"Batch," "Control substance," "Study," and "Test system," revised; "Test substance or mixture," removed; "Carrier," "Experimental start date," "Experimental termination date," "Reference substance," "Study completion date," "Study initiation date," "Test substance," and "Vehicle," added.
792.12	Introductory text, revised.
792.17	(a) and (c), revised.
792.29	(d), (e), and (f), revised.
792.31	(b), revised.
792.35	(a), (b) (1), and (3), revised; (e), removed.
792.41	Revised.
792.43	Revised.
792.45	Revised.
792.47	Revised.
792.49	Revised.
792.53	Removed.
792.61	Revised.
792.63	(b), revised.
792.81	(b) (1), (2), (3), (5), (6), (7), and (12) and (c), revised.
792.90	Revised.
Subpart F	Title revised.
792.105	Revised.
792.107	Revised.
792.113	Revised.
792.120	(a), revised.
792.130	(d) and (e), revised.
792.135	Added
792.185	(a) (4) and (5), and (c), revised.
792.190	(a) and (e), revised.
792.195	(c), revised; (i) added.
Subpart L	Removed.

II. Summary of Comments and Responses

EPA received 14 comment letters: 6 from manufacturers of products

regulated by EPA, 3 from associations, 4 from testing or consulting laboratories, and 1 from another government agency. The majority of the comments supported the proposed changes, although numerous suggestions were made for additional revisions to parts of the GLP regulations not subject to this rulemaking or modifications to the proposed changes. Comments that raised important policy questions, suggested modification to the essence of the proposed regulation, or required an individual response, are discussed below. Comments addressing changes to the GLP standards that were not proposed are not the subject of this rulemaking. However, all comments made have been placed in the public record.

A. General Provisions: Definitions

1. *Batch.* The definition of "batch" is expanded to include reference substances. This was an omission in the proposed rule that is corrected in the final rule to maintain consistency with the use of the term in § 792.105(a).

2. *Carrier*—i. *Comment:* The word "systems" should replace the word "organisms" in the definition of "carrier," to be consistent with the term "test system."

Response: EPA concurs with the suggestion. In order to be consistent with the definition of "test systems," the word is changed accordingly.

ii. *Comment:* EPA should revise the list in parentheses that follows the word "material" in the definition of "carrier" to make it all inclusive.

Response: EPA has decided to add the phrase "including but not limited to * * *", to indicate that the list provides examples and is not meant to be all inclusive.

3. *Control substance—Comment:* EPA should delete the phrase "for no-effect levels" in the definition of control substance. The definition as written is too narrow and excludes analytical chemistry (e.g., chemical fate, residue chemistry) operations where the term "control" has a meaning distinctly different from biological effects.

Response: Since the purpose of the analytical control is to eventually establish that none of the materials administered to the test system interfere with identification of the test substance and its degradate(s) and metabolite(s), EPA agrees that the terminology is too limiting and is replacing the phrase "for no-effect levels" with the phrase "for known chemical or biological measurements." The definition now reads: "Control substance means any chemical substance or mixture, or any other material other than a test substance, feed, or water, that is administered to the test system in the course of a study for the purpose of establishing a basis for comparison with the test substance for known chemical or biological measurements."

4. *Experimental start and termination dates—Comment:* These dates would be difficult to predict, especially for field studies, because they would be subject to natural or man-made conditions that cannot be controlled or anticipated. Since the dates would be subject to change, many protocol amendments would be required, creating an undue administrative burden.

Response: The experimental start and termination dates specified in the protocol are merely proposed dates. Therefore if the actual experimental start or termination date is different from the proposed dates no protocol amendment would be required.

5. *Reference substance—Comment:* If EPA intended the term "reference substance" to include analytical and calibration standards, then several other sections of the proposed rule which mention "reference substance," would also require the same types of records to be kept for analytical standards. This would constitute an excessive burden on management which would require maintaining various records that do not add any value to the study.

Response: The definition of reference substance is intended to include analytical reference standards. Therefore, EPA believes this change eliminates any ambiguity in the definition. EPA has modified the definition of "reference substance," as follows: "Reference substance means any chemical substance or mixture, analytical reference standard, or material other than a test substance, feed, or water, that is administered to or used in analyzing the test system in the course of a study for purposes of establishing a basis for comparison with the test substance for known chemical or biological measurements."

EPA disagrees that inclusion of analytical reference standards in this part constitutes an excessive documentation burden or adds no value to the study. Documentation which supports defining of analytical reference standards under this part should not require excess paperwork since common laboratory practices already require assurance of the validity of standards to make certain that the measurements are accurate.

6. *Study*—i. *Comment:* The proposed definition of study would imply that each determination such as stability, solubility, octanol water partition coefficient, volatility, persistence, and other data point determinations would be studies with concomitant requirements such as protocols and quality assurance unit (QAU) inspections.

Response: EPA intends that QAU inspections as listed in § 792.35 be conducted at intervals adequate to ensure the integrity of the study for each determination such as stability, solubility, octanol water partition coefficient, volatility, persistence, and other data point determinations. However, if done as part of a larger study, then these determinations are covered under the larger study's protocol or standard operating procedure (SOP). If they are submitted to EPA as a study unto itself, then they require their own protocol(s).

ii. *Comment:* An experiment such as product chemistry which does not involve a test system cannot be considered a "study" and therefore should not be covered by GLP standards.

Response: Studies designed to determine the physical or chemical characteristics of a test substance are included within the scope of these regulations. Therefore, EPA intends to include product chemistry experiments in the definition of "study." This change is consistent with the definition of the term "study" as it now appears, and as it appears in the FIFRA GLP standards at 40 CFR part 160. In the case of product chemistry experiments, the test substance itself may be the test system.

iii. *Comment:* The addition of the term "or in the environment" to the definition of "study" indicates that the change extends the proposed regulations to field studies. While it is necessary to ensure the validity of all data collected, the variety and special requirements of field research have not been addressed in the new rules.

Response: These regulations are intended to apply to all studies required to be submitted under TSCA, including those conducted in the field. EPA recognizes that field studies vary and have special requirements, but believes that the development of protocols and SOPs by the testing facility provides adequate flexibility in this respect.

iv. *Comment:* "Prospectively" should not be deleted from the definition of "study." If the essence of GLP standards requires a carefully planned study and the proposed rule is very strict about documentation that must be completed prior to the experimental start date, how can the GLP standards also apply to studies that were generated without a protocol or advance planning, such as epidemiology?

Response: EPA disagrees with the comment. The term prospectively is deleted because EPA wishes all studies, including epidemiological studies where past exposure to a study population is determined or estimated retrospectively, to be performed under GLP standards. EPA recognizes that in such studies data used may not have been generated in conformance with FIFRA GLP standards. However, it is EPA's position that the study itself can be conducted and submitted to EPA in accordance with the GLP standards. Retrospective aspects of such studies that are not performed according to GLP standards, for example, test system treatment, should be identified in the compliance statement submitted with the study report.

In addition, the types of studies potentially not covered by these regulations were expanded in the definition to include experiments involving test methods.

7. *Test system—Comment:* What constitutes the "test system" in tests of product chemistry studies?

Response: The definition of "test system" includes the statement that it is "* * * any * * * chemical or physical matrix * * *," including subparts thereof that are treated with the test, control, or reference substance and also appropriate components of the system that are not treated. Therefore, in the case of product chemistry, the test system may be the test substance itself.

EPA is including the term "reference," which was inadvertently omitted from the definition as it appeared in the proposed rule, in order to remain consistent. In addition, EPA is replacing "e.g." in the parenthetical by adding "including but not limited to" in order to clarify that it is not EPA's intent for the list to be all encompassing.

8. *Vehicle—Comment:* The definition of "vehicle" serves to clarify the GLP standards, but there has been no confusion based on the current standards and this change is contrary to EPA's stated objective of being consistent with FDA's GLP regulations.

Response: EPA believes that clarification is needed. The EPA GLP standards cover a larger number of types of studies and the need for clarification of the meaning of potentially ambiguous terms is greater.

B. Organization and Personnel

1. *Testing Facility Management—Comment:* The "master schedule" should not be considered "raw data" as was indicated in the preamble (52 FR 48936) to the proposed rule.

Response: EPA deleted the requirement that the replacement of a study director must be documented as "raw data" in order to conform to the revised FDA GLP regulations. This is because replacement of the study director must be reflected on the master schedule sheet, which is a study record that must be retained.

In addition, the term "reference," which was inadvertently omitted in the proposed rule, has been added to this section.

2. *Quality Assurance Unit—*i. *Comment:* A QAU that is entirely separate from and independent of the personnel engaged in the conduct of the study creates an unjustified financial burden on some facilities. In some cases it would be impossible to establish a completely independent QAU with qualified personnel.

Response: As stated in the proposed rule (52 FR 48933), EPA does not require the QAU to be a fixed, permanently staffed unit whose only functions are to monitor the quality of a study. EPA is only concerned that there be a distinct separation of duties between those personnel involved with the conduct or direction of a study and those personnel performing quality assurance on the same study. Therefore, § 792.35(a) prohibits personnel from performing quality assurance activities on their own study. The rules allow a study director for a particular study to serve as a part of the QAU or as the QAU for a different study. FDA noted (52 FR 33771) that it was aware that many small laboratories could not afford the operation of a permanently staffed QAU. EPA would like to point out that in those situations where there are different individuals performing the quality assurance functions for different studies, each individual is required to maintain that portion of the master schedule sheet which relates to the study being monitored. For this reason, EPA agrees with FDA's conclusion that the separation of functions on a study-by-study basis, as permitted in the existing and revised regulations, would provide effective quality assurance. In view of the potential gain to management, to sponsors, and to EPA, through the added assurance of well-conducted studies, the increased costs are thereby justified. EPA believes that its intent is more clearly indicated by the changes now being made.

ii. *Comment:* Laboratory management should have the discretion to determine who enters the data into the master schedule, as long as the required information is listed.

Response: EPA believes that management retains such discretion since it is involved in determining the composition of the QAU and it provides an adequate number of such personnel (§§ 792.31 (c) and (e)). The QAU is distinguished by training that ensures that QAU functions are properly conducted. As stated above, study personnel may belong to the QAU, as long as they are not performing the QAU functions associated with studies in which they are involved.

iii. *Comment:* The requirement for inspection of each study under § 792.35(b)(3), regardless of duration, is excessive for the quality assurance needed to address study integrity, especially where studies are performed by highly standardized procedures. The repetitive inspection of these types of studies would consume large amounts of time for both the study personnel and QAU staff. Auditing each study is not necessary to ensure the work is conducted in compliance with the regulations. Random sampling procedures should be allowed in selecting studies and phases of studies to inspect to decrease the work load and resource requirements of the QAU.

Response: EPA does not believe that a random inspection program would be an appropriate method of evaluating a study. Generally, random sampling provides an adequate means of quality control where analysis involves repetition or identical procedures. However, any assumption that the conduct of one phase of one study would be representative of another would be invalidated by the differences among study personnel and the operations they conduct. Furthermore, this requirement does not apply to all routine studies. Section 792.35(b) is among the exclusions for chemical and physical characterization studies as listed in § 792.135(b).

In conformance with the revised FDA GLP regulations (52 FR 33780), EPA modified the requirements of § 792.35(b)(3) to provide for inspections of a study on a schedule adequate to ensure the integrity of the study. The changes to this section will allow the QAU the necessary latitude to adjust its monitoring activities to meet the individual problems of each study. However, each study, no matter how short, must be inspected at least once while in progress. EPA expects that by allowing the QAU flexibility in designing a reasonable inspection schedule, the goal of ensuring the quality of the study can be best achieved.

iv. *Comment:* EPA indicates in the preamble to the proposed rule (§ 792.35(e), 52 FR 48936) that all QAU records will now be routinely available to inspectors. Existing GLP standards

treat certain QAU records as confidential, and explicitly state that the only QAU records to be reviewed by EPA auditors would be the master schedule (e.g., the inspection dates, study inspected, the phase or segment of the study inspected, and the name of the individual performing the inspection). If QAU records for findings and corrective action are available on an auditor's request, QAUs would lose their effectiveness.

Response: EPA shares the concerns of the commenters that access to all parts of a QAU inspection would weaken the inspection system, and recognizes the need to maintain a degree of confidentiality. Therefore, records of findings and problems, as well as records of corrective action recommended and taken, are exempt from routine EPA inspections, except under special circumstances as indicated in § 792.15. However, EPA maintains that all other reports and records must be easily accessible and made available to EPA and FDA inspectors when requested as indicated in § 792.35(c).

C. Facilities

1. *General—Comment:* Outdoor testing facilities should not be under GLP standards since: (a) Outdoor test facilities will be conducting studies according to approved protocols; (b) ensuring suitability is highly subjective based on the diverse number of possible locations; (c) there is a concomitant lack of clear standards for determining suitability of locations.

Despite best efforts, the choice could always be subject to criticism and even criminal liability based on a good faith compliance statement indicating GLP standards had been followed. Most outdoor testing is done to mimic normal environmental conditions which are specific for the test substance and use being proposed. Therefore, the determination of whether the size, construction or location of a facility is suitable for a study is a technical issue, and is not within the scope of the GLP regulation and would be considered in the experimental design of the protocol.

Response: In cases where an EPA-approved protocol establishes test locations, that protocol would satisfy GLP requirements. EPA considers any site to be the testing facility wherever testing is undertaken to generate data required to be submitted to EPA. The conditions required by the protocol are not necessarily conducive to artificial manipulation in the field, or to other outdoor testing facilities. Therefore, ensuring the suitability of the location of these types of testing facilities is both a valid and necessary part of protocols approved by EPA.

2. *Test system care facilities.* i. *Comment:* Instead of expanding the original document to fit all test systems, the old rules should be left as is, and a statement added to cover non-animal test systems.

Response: EPA disagrees with the comment and believes that specific changes of the old rule are necessary to avoid ambiguity concerning the meaning of non-animal test systems.

ii. *Comment:* Section 792.43(a)(2) and (b), (e), (f), (g), and (h) should be deleted because EPA has already stated that these GLP requirements will be applicable to all types of testing. It is not necessary to add the four new paragraphs detailing specific requirements of environmental conditions for aquatic organisms and plants.

Response: EPA believes that some test systems, e.g., aquatic, are unique to the extent that they require special treatment in the rules.

iii. *Comment:* The change in § 792.43(c) is appropriate but the current wording does not require separate disease handling facilities in every case. The proposed change has merit in clarifying the options available to laboratories and the change promotes harmony between EPA and FDA GLP regulations.

Response: EPA agrees with the comment. In § 792.43(c), EPA is deleting the requirement that separate areas be provided in all cases for the diagnosis, treatment, and control of test system diseases. Instead, a change is made so that separate areas are provided "as appropriate." This change is consistent with the September 4, 1987 revised FDA GLP regulations and the revised FIFRA GLP regulations.

EPA has made this change to allow laboratories the option of disposing of diseased test systems without also bearing the expense of maintaining separate areas in testing facilities for diagnosis, treatment, and control of disease. Additionally, EPA recognizes that the diagnosis and treatment requirements of § 792.43(c) may not be appropriate when dealing with such test systems as soil, plants, or microorganisms. However, if the decision is made not to dispose of the test system, then test system care facilities, as specified in § 792.43(c), must be provided.

3. *Test system supply facilities.* i. *Comment:* The addition of the two new paragraphs outlining plant and aquatic facilities to § 792.45(b) is unnecessary. These considerations are addressed in § 792.41 with the requirement that testing facilities be of suitable construction "to facilitate proper conduct of studies."

Response: EPA maintains that testing facilities as mentioned in § 792.41 and test system supply facilities as mentioned in § 792.45, are not the same and must be addressed separately.

ii. *Comment:* EPA should delete § 792.45(b) introductory text, (b)(1), (b)(2), and (c) because this information was adequately covered in § 792.45(a) and in § 792.43, and the facilities they refer to will be addressed in study protocol.

Response: EPA maintains that § 792.43 (test system care) is different from § 792.45 (test system supply) and must therefore be treated separately.

4. *Facilities for handling test, control, and reference substances—Comment:* Would it be necessary to provide separate sink facilities or separate rooms for mixing of the test, control, and reference substances or for adding water to tank sprayers?

Response: Separate areas are required for receipt, mixing and storage of test, control, and reference substances and their mixtures as necessary to prevent contamination or mixups. The same sink could be used for all work involving mixing provided that the procedures (standard operating procedures) used are adequate to prevent contamination and mixups. Separate areas for receipt and storage, mixing and storage of test, control, and reference substances as required in § 792.47(a) (1), (2) and (3) does not mandate the use of separate rooms. The areas could be in the same room provided there is adequate space and equipment to provide that contamination and mixup do not occur. This determination should be made on a case-by-case basis.

D. Equipment

Maintenance and calibration of equipment—Comment: It is better to designate in § 792.63(b) that repair and maintenance will be performed by "qualified personnel," than to require that a person be designated in the written SOP. The requirement for written SOPs in § 792.63(b) causes problems since at many laboratories the equipment used in conducting a study is shared by a number of individuals and the care and maintenance of the equipment is also shared. In the event of equipment failure, a number of laboratory personnel may be capable of effecting repair or correcting a problem, or in more serious equipment failures, a service representative of the manufacturer may be called. It is therefore difficult and very inefficient to

designate specific people to perform each specific maintenance and repair operation.

Response: The definition of "person" as it appears in § 792.3(h) is not limited to an individual scientist or technician, but includes an organizational subunit. Consequently, the SOP that designates the "person responsible" will be designating a subunit of the testing facility, which could be one or several individuals. This view is consistent with FDA's (52 FR 33774) interpretation and definition of "person." Where duties are delegated in the SOPs all contingencies may be addressed, including the contracting of service personnel.

E. Testing Facilities Operation

1. *Standard operating procedures*—i. *Comment:* Some of the examples of required SOPs provided in § 792.81(b) are not applicable to all test systems or study types. For example, "test room preparation" would not be appropriate when conducting field studies, and "necropsy of test system or postmortem examination of test systems," would not apply to studies using a chemical or physical matrix as the test system (sterile water, soil, agricultural fields). Furthermore, § 792.81(c) states that, "Each laboratory or other study area shall have immediately available manuals and SOPs relative to the laboratory or field procedures being performed."

Response: EPA agrees that the term "room" in § 792.81(b)(1) is inappropriate to many studies and is changing the word to "area" to clarify that field studies are included. EPA believes that § 792.81(b) should apply in all cases since the purpose of SOPs is to insure the quality and integrity of the data generated in the course of a study as stated in § 792.81(a). However, procedures that are not performed, such as necropsy in the case of field studies, do not require SOPs.

ii. *Comment:* Published literature (e.g., ASTM methods) should be acceptable in § 792.81(c) as an appropriate part of an SOP and not just as a supplement to a written SOP. The written SOP could incorporate the published literature into it by reference, without having to rewrite the entire procedure.

Response: EPA agrees that it would not be appropriate to rewrite published literature, hence the allowance for SOPs to use them as supplements. The SOPs are still needed to establish the relationship of the method to data collection procedures and needs in the laboratory. While the resulting SOP would still have to be written it would in effect be abbreviated in that all of the methodology referenced would not need to be rewritten.

2. *Animal and other test system care*—i. *Comment:* The evaluation of certain test systems according to "acceptable * * * scientific practice" creates some difficulty, particularly for plants, microorganisms, soil, and water, since such practices are not defined. "Acceptable" should be deleted regarding scientific practice and the requirement be only that a scientific basis be used in determining appropriateness for testing. In this way, testing facilities would not need to justify or prove their basis to be "acceptable" in ill-defined areas or those in flux.

Response: EPA agrees that the term "acceptable scientific practice" may not be definable when method developments are in flux. The term "acceptable" is retained, but the term "scientific practice" is changed to "scientific methods." This change preserves the EPA's intent that rigorous scientific methodology be used without implying that rigid practices be adhered to where they may not appropriately exist.

ii. *Comment:* Section 792.90(c) should be deleted since the effect of corrective treatment cannot be accounted for in test results.

Response: EPA believes that while the effects of corrective actions taken to isolate and treat disease or signs of disease may complicate interpretation of test results, so might the effects of the disease itself. This requirement for field studies is not inconsistent with its inclusion for laboratory, i.e. toxicology, studies.

iii. *Comment:* Markings which identify animals individually, rather than the group as required by § 792.90(d), are needed in many studies with warm blooded vertebrates in pens, or in the field. For example, precocial young of avian species should be marked individually.

Response: Specific criteria for marking of individuals to meet study requirements should be addressed separately in the protocol of the study. The requirement in § 792.90(d) addresses the need that test systems be adequately identified to prevent confounding with other test systems. Identification of precocial birds, for example, may be outlined in the study protocol.

iv. *Comment:* The proposed multispecies housing under § 792.90(e)(1) is redundant to proposed § 792.43(a)(1) and is inconsistent with EPA's desire to streamline GLP standards.

Response: EPA disagrees with the conclusion that these provisions are redundant. While § 792.43(a)(1) states that the facilities shall be sufficient to allow proper separation of species, § 792.90(e)(1) refers specifically to test system care within the facilities.

v. *Comment:* The requirement in § 792.90(j) for acclimatization of plants and animals should be deleted, since it is not defined and promotes confusion. Animal toxicology tests would be subject to isolation and separately to acclimatization. Organisms in environmental studies will have been isolated with their health status being evaluated per § 792.90(b) and acclimatization would have already been performed as part of the process. This part should be amended to indicate that test organisms should be acclimatized to all experimental conditions except the test substance.

Response: EPA believes that the term acclimatization has common meaning that is clear in the context of its usage in the rule. Acclimatization implies accustoming to experimental, i.e. environmental, conditions other than the actual introduction of the effect (e.g. test substance) to be measured in the experiment. If acclimatization is achieved during the process of isolation then it should be so stated in the protocol and does not require additional technical effort.

In addition, the term "organisms" in § 792.90(j) has been changed to "systems." This change is consistent with the intended expansion of GLP standards and was an inadvertent omission in the proposed rule.

F. Test, Control, and Reference Substances

1. *Test, control, and reference substance characterization*—i. *Comment:* The term "purity" should be expanded to include radiochemical purity since further definition is needed to encompass metabolism/environmental fate studies conducted with radioactive materials.

Response: Radiochemical purity is covered under "other characteristics which appropriately define the test, control, or reference substance." It is not necessary to specifically list this characteristic.

ii. *Comment:* What level of analysis constitutes "appropriate" characterization? Is quality control batch analysis sufficient? Is it necessary to fully characterize technical materials to 0.1 percent?

Response: The details of what "appropriately" defines the test substance is a guideline or protocol

issue that cannot be specified in a generic document such as GLP standards. The appropriate level of characterization is largely dependent on the nature and purpose of the study.

iii. *Comment:* The characterization requirement is inappropriate since it conflicts with management responsibilities, is costly and adds unnecessary delays to the development process. It removes a necessary option of planning by objectives that responsible business management must retain. Delays and rescheduling, which may result if inadequate work is permitted by management, are real consequences that must be accepted by management, and management must decide whether or not to risk beginning an experiment prior to doing characterization studies. Since the ultimate validity of a study will require that such data be obtained before the study is completed and as long as the sponsor can demonstrate that a study was conducted with authentic material, it is irrelevant when the characterization is completed. This proposal is not in concert with FDA GLPs. Many times prospective products fail to reach the marketplace due to unusual or insurmountable problems. Therefore, eliminating the need for characterization of product will reduce the costs of these products that fall out of the developmental process.

Response: Characterization is necessary to ensure integrity of studies. It is also necessary for EPA to have characterization data available for inspectional purposes during ongoing studies, and thus to have this information complete at the beginning of the study. Without characterization, it is not possible to know whether test, control, or reference substances from different batches that are used in a single study are in fact identical. Adequate testing for characterization normally occurs during the synthesis or production of test, control, and reference substances, and thus should already be available before the test begins. Consequently, having characterization data available should not impose an additional burden in most cases.

EPA does agree, however, that stability testing should be allowed to be performed concurrently with the study, to prevent unreasonable delays. The sponsor will bear the burden of a repeated test in the case that concurrent stability testing suggests that the study is not valid. For that reason, EPA is revising § 792.105(b) to allow for concomitant determination of stability.

iv. *Comment:* The last sentence of § 792.105(a), relating to methods and fabrication should be deleted since these may contain confidential business information (CBI).

Response: This is not a new requirement and has not posed any problems. Inspectors are cleared to handle CBI material; any sensitive information can be declared CBI and treated as such.

v. *Comment:* Many of the tests coming under the scope of the proposed GLP standards are in themselves stability studies. The proposal places industry in the quandary of conducting stability studies prior to a stability study.

Response: The performance tests cited cannot be considered to be stability tests under the GLP standards. In the context described above, the persistence of the substance in the environment is a separately measured parameter. However, when performing such tests, it is still important to know the stability of the substance to ensure that the measured effect was due to the effect of the test system.

vi. *Comment:* Would it be acceptable to EPA if the stability knowledge is based on the extrapolation of the results of a short-term stability study under extreme conditions carried out before the experimental starting date?

Response: Such an accelerated study would not demonstrate stability under test conditions, and could not be part of the concurrent stability testing in conjunction with a larger study. It would be a separate study with its own protocol.

vii. *Comment:* The proposed rule does not address whether quality control activities fall under the GLP standards.

Response: Not all quality control activities are GLP issues. Quality control work that is integral to the laboratory performing the study would be under GLP standards, but not that performed during manufacturing. Studies, as defined in this part, are subject to GLP standards only when required to be submitted to fulfill data requirements.

viii. *Comment:* The part related to "storage container assignment for the duration of a study" in § 792.105(c) would be unrealistic for field studies, especially where storage containers may be large tanks, or delivery systems which are possibly not even owned by the sponsor or testing facility.

Response: The delivery systems and tanks that are part of delivery systems are not "storage containers." Test, control, and reference substances will, however, be stored before use in some container that is unique to that substance during the test. This may be the container that the substance comes in or that is assigned to it by the testing facility.

ix. *Comment:* Liquids from large containers are often placed into smaller containers for use during the study. Consolidation of the test substance into smaller containers as the supply is depleted should be allowed. These containers need not be retained after they are empty, since their retention does not enhance the quality or integrity of the data collected.

Response: EPA disagrees with the suggestion. The retention of containers is necessary to ensure the integrity of the study. This includes empty containers, which must be kept to verify the disposition of the test, control, and reference substance. Disposal of containers adversely affects accountability. This provision of the rule is not changed from the 1983 rule, but was commented on by the public because it may affect types of studies, such as field studies, that will now fall under the provisions of the rule as a result of these amendments.

x. *Comment:* How are "studies of more than 4 weeks duration" specified in § 792.105(d) defined? They should be defined as studies having an "in-life phase" of more than 4 weeks.

Response: The term "4 weeks duration" is meant to apply to the experimental start and experimental termination dates. The suggestion of using the term "in-life phase" is not accepted since this introduces new terminology that is not adequately defined. The term "4 weeks experimental duration" replaces "4 weeks duration" in § 792.105(d) to clarify that the study initiation and study completion dates are not implied.

xi. *Comment:* Knowledge of stability makes sense for long-term, but not short-term studies because if stability is suspect then doses are made up each day and given or sprayed immediately. Adequate knowledge of stability may exist from chemical information about the test substance.

Response: If a substance is known to be stable for a few days, then its stability is known in terms of the test requirements. If the stability is not known then it must be determined, even for short studies. Storage stability needs to be known even if the material is used "immediately". If enough information is known about the material to support its stability from other testing then its stability is known and the requirement is met. However, theoretical stability is not considered to be adequate. The method used to compensate for poor stability, such as daily mixing or immediate application, is a technical issue that cannot be specifically prescribed in GLP standards.

2. *Test, control, and reference substance handling—Comment:* If the test, control, or reference substance is inherently unstable, it may not be possible to "preclude deterioration * * *". Therefore, the regulation should allow for periodic evaluation of the purity of the test substance during a study to assure its integrity and replace it when shown to be warranted.

Response: The intent is to prevent deterioration due to handling. Periodic testing is allowed under § 792.105(b) as changed in the final rule.

3. *Mixtures of substances with carriers*—i. *Comment:* Does § 792.113 require determination of uniformity, stability, and solubility during field residue studies? If so, does it require analyses for each tank preparation? This requirement would impose a large burden on testing facilities performing these types of studies.

Response: The purpose of this section is to assure that the methodology used to prepare the mixture is valid. Once the methodology has been proven for a particular mixture, it need not be reconfirmed each time that mixture is prepared. For field trials, there will likely already be data submitted to EPA that support the uniformity, stability and solubility of a substance in the carrier when prepared by appropriate methodology, i.e. according to the proposed use or label. In such cases it should not be necessary to test each batch that is prepared for field application. However, field trials do remain subject to the requirements of this section. Where available data are inadequate to support uniformity, stability, and solubility in a particular case, then it is necessary for the data to be generated under this section. Also, there may be protocol stipulations applicable to a particular study that require tank mixture analyses in addition to any provisions of this section.

ii. *Comment:* The range of environmental conditions encountered in field trials are great and would require extensive evaluations of stability and solubility under numerous environmental conditions. This amount of data could not be evaluated prior to study initiation.

Response: Section 792.113(a)(2) states that the determination(s) shall be "* * * under the environmental conditions specified in the protocol and as required by the conditions of the test." All possible environmental conditions do not have to be anticipated and tested unless required in the protocol.

iii. *Comment:* Short-term toxicity and field residue studies should be exempted from this section since supplementary analyses are performed for other studies with the same test substance. The analytical cost could equal or exceed the cost of the remainder of the short-term study.

Response: The GLP standards do not require characterization for each study. The characterization is required for each test, control, and reference substance. The same substance may need to be characterized only once, even if used on multiple studies.

iv. *Comment:* The requirement for stability and solubility should allow flexibility for the sponsor to make the determination either before, during, or after the study. When to determine the stability is a business decision based on knowledge of the risk of having to repeat a study, if the stability data negatively impacts the integrity of the study.

Response: EPA understands that requiring stability testing to be completed prior to a study may introduce unreasonable delays. In harmony with the modification of § 792.105(b) to allow concurrent stability testing of test, control, and reference substances, § 792.113(a)(2) is changed to allow stability testing of mixtures to be performed concomitantly with the study. This allows flexibility and is consistent with FDA's GLP regulations.

v. *Comment:* In the very early stage of a compound's development there is a need for basic acute toxicity tests. However, there are no analytical methods and calibrated reference standards available to test the stability of the test substance in the carrier according to GLP standards. An estimate of the stability of the compound in an inert carrier like starch, oil, or polyethylene glycol is possible and should be sufficient as a preliminary approach. The stability test will be carried out as early as the analytical methods are available.

Response: If a carrier is used, the mixture with the carrier must go through the same test, i.e. stability, solubility, etc. Instability of the mixture in a specific carrier is important since it may affect the apparent effects of the test substance.

vi. *Comment:* The assurances called for in § 792.113(c) are not well defined. How would the addition of the vehicle used to facilitate mixing of the test substance with the carrier to the control system affect this requirement? If the vehicle is identically mixed in control, is there a need to show noninterference?

Response: Any vehicle used to facilitate mixing must be shown not to interfere with the study. This includes a vehicle control to determine interaction effect.

G. Protocol for and Conduct of a Study

1. *Protocol—General*—i. *Comment:* Section 792.120(a) (5), (7), (10), and (11) should not apply to product chemistry experiments.

Response: The term "test system" is redefined to include any physical matrix, which may thus be applicable to product chemistry studies. However, note that a study designed solely for the determination of certain chemical or physical characteristics of a test substance are exempted from § 792.120(a) (5), (7), (10), and (11) as described in § 792.135.

In addition, the word "of" prior to "frequency" should be "and". This was a typographical error noticed by one commenter and has been corrected in the final rule.

ii. *Comment:* Guidance is needed in the final preamble for presenting addresses, as required by § 792.120(a)(3), of field and environmental locations used to conduct tests.

Response: The address of the testing facility is the address of the "person" (i.e. organizational unit or subunit) who actually conducts the study. Even if this organizational unit includes parts situated in different locations it may still be considered to have one address. The address should be a permanent address and would probably be synonymous with the address of the study director and/or testing facility's management.

iii. *Comment:* "Address of sponsor" should be removed from this part to maintain consistency with FDA GLP regulations.

Response: EPA maintains that the address of the sponsor is essential to its inspectional process, which differs from that of FDA.

iv. *Comment:* The requirement in § 792.120(a)(4) to state the proposed experimental start and termination dates poses problems for field studies where these dates cannot be predicted with certainty. Would this result in protocol deviations whenever these dates are not exactly met?

Response: The requirement to document the proposed experimental start and termination date in the protocol does not suggest that a protocol deviation occurs when the date is not met. The term "proposed" signifies that this date is estimated. However, gross deviation from the proposed date may be a violation of the protocol, if there are date-critical aspects of the study that are identified as such.

v. *Comment:* Section 792.120(a)(5) is inappropriate because: (a) Justification should be required only when more than one test system can be used in a study; (b) where standard test systems are used, justification should not be required; (c) justification should only be required for those that deviate from, or fall outside the test standards; (d) this requirement does not promote harmony between the EPA and FDA GLPs.

Response: Environmental studies are more diverse than health effects testing and are subject to details relevant to test system design that are more chemically dependent than is the case in health effects studies. Furthermore, § 792.120(a)(5) is not seen to impose a burden in the cases described in this comment. In the case where only one test system can be used, that is a justification that should be stated. If a standard test system is used because it is the referenced system in EPA or Organization for Economic Cooperation and Development (OECD) guidelines, then citing the use of such guidelines is sufficient justification. Thus, detailed discussions are required only in the relatively few cases where the study design requires deviation or special choices to be made in selection of the test system.

vi. *Comment:* EPA should add "range" to § 792.120(a)(6) so it reads "* * * body weight range," since without specifying range, the protocol requirement could be misinterpreted to mean that all individual body weights of the test system should be included. This would not be possible since exact weights of test systems would not be known when the protocol is prepared.

Response: EPA did not intend to make a change here and retains the term "body weight range" as used in the 1983 rule.

vii. *Comment:* Section 792.120(a)(10) should be modified to read "* * * route of administration and/or exposure * * *" to encompass other types of protocols.

Response: EPA disagrees with the suggestion since the experimenter controls administration but does not have control of the route of exposure. Administration routes cover the potential of all exposure routes and hence is a more general, all-inclusive term.

viii. *Comment:* Section 792.120(a)(10) should be reworded so that it reads: "The route or method of administration/application and the reason for choice, if appropriate."

Response: EPA disagrees with the suggestion. The route of administration is not the same concept as method of application or administration. It would not be appropriate to introduce statements concerning methodology into this section.

2. *Physical and chemical characterization studies*—i. *Comment:* Section 792.135 is confusing and needs to be read several times in order to understand it. EPA should clarify its intent by specifying those studies to be conducted under GLP standards, and by removing the double negatives currently presented in § 792.135 (a) and (b).

Response: EPA agrees with the comment. The section is changed to eliminate the double negative and reworded for clarity while retaining the intent of the proposed changes.

ii. *Comment:* Should exemptions also apply to "assembly line" biological studies, such as the Ames test, acute lethality, eye irritation, etc.?

Response: EPA does not intend to expand exemptions to biological tests previously covered by GLP standards, even where they are repetitive in nature. Section 792.135 applies only to physical and chemical characterization studies and is intended to ease the burden on many studies that will now come under GLP standards.

iii. *Comment:* The concept of what constitutes a study is blurred by this section. Partial deletion of protocol requirements implies that a protocol is still required for these "exempted measurements."

Response: EPA intends that a protocol still be required for the partially exempted studies. Some, but not all, of the full protocol requirements are eliminated.

iv. *Comment:* Areas for receipt and storage of test substances have been deleted in § 792.47(a)(1), but corresponding SOPs are still required by § 792.81(b)(3).

Response: EPA maintains that SOPs for test, control, and reference substance handling are still important, if not more important, when facilities for their handling are not specified.

v. *Comment:* Stability is to be known under conditions of the test under § 792.105(e), but the requirement to report that information is deleted in § 792.185(a)(5), and the requirement to determine stability is removed by deleting § 792.105(b).

Response: EPA agrees, but there is no contradiction. The requirements for determination and reporting of stability are relaxed although stability still needs to be known.

vi. *Comment:* A protocol is required even though certain specific elements have been deleted (§ 792.120(a) (5) through (12) and (15)), but the requirement for the quality assurance unit to retain the protocol is deleted (§ 792.195(d)).

Response: EPA agrees that this is true. The QAU record-keeping requirements are relaxed although the protocol still needs to be written.

vii. *Comment:* A quality assurance unit is required by § 792.35(a), but by deleting § 792.31(c) management will not have to assure the existence of a QAU.

Response: EPA eliminated § 792.31(c) since it requires management to "assure that there is a quality assurance unit as described in § 792.35." This would have contradicted the exclusion of certain portions of § 792.35 as specified (i.e., § 792.35 (b) and (c)). That which is not excluded under § 792.35 must comply with § 792.35(a).

viii. *Comment:* A study director is required according to §§ 792.12 and 792.33, but does not have to be shown in the final report by deletion of § 792.185(a)(10).

Response: The study director is still required to sign the compliance statement submitted with the final report as required in § 792.12 and is thus required to be named in the final report. A number of individuals are listed in § 792.185(a)(10) in addition to the study director. This section was exempted to reduce reporting requirements.

ix. *Comment:* Studies designed to determine octanol water partition coefficient, volatility, and environmental persistence (biodegradation, photodegradation, or chemical degradation studies) should exclude §§ 792.43 (a)(1) through (c) and (f) through (h), 792.45, 792.81(b) (1), (2), (6), (7), and (9), and 792.90. Only the physical and chemical properties that are used to predict the environmental fate of a test substance should be developed in compliance with these regulations. Those properties which are not clearly used for this purpose should be excluded.

Response: EPA does not agree that the listed sections are irrelevant in their entirety to the listed studies. Those portions of the sections which are plainly not applicable to these studies (e.g., animal care facilities) do not place any burden on these studies.

x. *Comment:* The removal of physical and chemical characterization from the responsibilities of the QAU should not be accepted because it presents a major problem for the QAU personnel. The QAU should be responsible for every study within the laboratory with no exception.

Response: EPA disagrees with the conclusion that the OAU has no responsibilities in physical and chemical characterization studies. The exclusions

reduce the responsibilities of the QAU, i.e., master schedule requirements, etc., but do not eliminate them.

xi. *Comment:* The QAU should be responsible for looking at the functional components of the laboratory (e.g., all melting points, all GC/MS analyses, etc.) rather than focusing on a particular study, such as with toxicology studies.

Response: EPA agrees and is modifying the inspectional requirements of the QAU under § 792.35. This change specifies that the QAU conduct inspections and maintain records that are appropriate to particular studies. This gives latitude to the QAU with respect to how the information is gathered; i.e., as part of the standard review procedures of the laboratory, or as needed for the test. This change should reduce burden in cases where it is appropriate to maintain central records regarding functional components that affect several studies rather than requiring such records to be maintained separately.

H. Records and Reports

1. *Storage and retrieval of records and data*—i. *Comment:* The phrase "beyond quality assurance" in § 792.190(a) needs clarification since it could be ambiguously interpreted. Does it mean the date of the final approved report? Does it mean beyond initial evaluation of the specimens, since that was the statement used in the corresponding preamble section?

Response: EPA intends that the specimens be retained until QAU assures that their discarding does not negatively impact the integrity of the study. The wording is being changed to "after quality assurance verification" to clarify this intent.

ii. *Comment:* Tissues and animal feeds collected from non-toxicology studies should also be discarded after quality assurance verification. If EPA does not intend for animal tissues to be retained from residue studies then "animal" not appearing after "plants" is an oversight.

Response: EPA did not include the term "animal" in the list since it would potentially include tissues and feeds from toxicology studies which must be kept under the GLP standards. The suggested wording would not provide sufficient breadth to cover non-residue samples. Therefore EPA will require that all animal tissue samples, even from non-toxicology studies, be included in this section.

iii. *Comment:* Retention time for ^{14}C-labelled specimens needs to be addressed since a facilities license limit could be exceeded for storing radioactive material.

Response: The problem of licensing requirements is a facility responsibility under GLP standards. EPA does not agree that special consideration be given to sample storage based on this reasoning.

2. *Retention of records*—i. *Comment:* The appropriate endpoint for specimen retention in § 792.195 should be based on the integrity of the specimens and use by the study director, or other technical personnel, not based on when QAU personnel may perform a review.

Response: Quality assurance evaluation is needed to assure that the integrity of the data is not compromised by the decision not to retain specimens. For consistency, EPA is changing the wording of § 792.195(c) to concur with the wording of § 792.190(a).

ii. *Comment:* EPA should explicitly state in § 792.195(i) that when exact copies are substituted for original source as raw data, then the original may be discarded. In the past EPA inspectors have required retention of original data sources even if exact copies existed. The burden imposed by some EPA auditors, that each copy must be signed and dated, is unrealistic. Verification of "batches" of reproduction copies is just as meaningful and would eliminate most of the unnecessary burden on personnel and time resources.

Response: Specific wording advising the discarding of raw data after copying is not necessary or useful. "True copies" will be acceptable as raw data by EPA inspectors under § 792.190. Signing and dating each copy may be impractical and an acceptable alternative method may be devised and incorporated into standard operating procedures to ensure the integrity of the copies. Laboratories are cautioned that discarding originals places additional burden on verification of the authenticity of the copies.

III. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a rule is a "major" one and is therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that these amendments of the TSCA Good Laboratory Practice standards do not constitute a major rule because they do not meet any of the criteria set forth and defined in section 1(b) of the Order.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and at the Office of Management and Budget, Washington, DC 20503, with OMB requests marked "Attention: Desk Officer for EPA."

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., EPA is certifying that these amendments to the Good Laboratory Practice standards will not have a significant impact on small businesses. Further, the revisions to the TSCA GLP standards which reflect the FDA GLP revisions primarily provide relief from the original GLP standards (ICF 1987). Therefore, these amendments to the TSCA GLP standards are not expected to have a significant economic impact on a substantial number of small businesses since little or no economic impact is expected from the changes overall.

List of Subjects in 40 CFR Part 792

Chemicals, Environmental protection, Good laboratory practices, Hazardous materials, Laboratories, Recordkeeping and reporting requirements.

Dated: July 27, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR part 792 is revised to read as follows:

PART 792—GOOD LABORATORY PRACTICE STANDARDS

Subpart A—General Provisions

Sec.
792.1 Scope.
792.3 Definitions.
792.10 Applicability to studies performed under grants and contracts.
792.12 Statement of compliance or non-compliance.
792.15 Inspection of a testing facility.
792.17 Effects of non-compliance.

Subpart B—Organization and Personnel

792.29 Personnel.
792.31 Testing facility management.
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792.35 Quality assurance unit.

Subpart C—Facilities

792.41 General.
792.43 Test system care facilities.
792.45 Test system supply facilities.
792.47 Facilities for handling test, control, and reference substances.
792.49 Laboratory operation areas.
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Subpart D—Equipment

792.61 Equipment design.
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792.81 Standard operating procedures.

Sec.

792.83 Reagents and solutions.
792.90 Animal and other test system care.

Subpart F—Test, Control, and Reference Substances

792.105 Test, control, and reference substance characterization.
792.107 Test, control, and reference substance handling.
792.113 Mixtures of substances with carriers.

Subpart G—Protocol for and Conduct of A Study

792.120 Protocol.
792.130 Conduct of a study.
792.135 Physical and chemical characterization studies.

Subparts H and I—[Reserved]

Subpart J—Records and Reports

792.185 Reporting of study results.
792.190 Storage and retrieval of records and data.
792.195 Retention of records.

Authority: 15 U.S.C. 2603.

Subpart A—General Provisions

§ 792.1 Scope.

(a) This part prescribes good laboratory practices for conducting studies relating to health effects, environmental effects, and chemical fate testing. This part is intended to ensure the quality and integrity of data submitted pursuant to testing consent agreements and test rules issued under section 4 of the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2006, 15 U.S.C. 2603 et seq.).

(b) This part applies to any study described by paragraph (a) of this section which any person conducts, initiates, or supports on or after September 18, 1989.

(c) It is EPA's policy that all data developed under section 5 of TSCA be in accordance with provisions of this part. If data are not developed in accordance with the provisions of this part, EPA will consider such data insufficient to evaluate the health and environmental effects of the chemical substances unless the submitter provides additional information demonstrating that the data are reliable and adequate.

§ 792.3 Definitions.

As used in this part the following terms shall have the meanings specified:

Batch means a specific quantity or lot of a test, control, or reference substance that has been characterized according to § 792.105(a).

Carrier means any material, including but not limited to, feed, water, soil, and nutrient media, with which the test substance is combined for administration to a test system.

Control substance means any chemical substance or mixture, or any other material other than a test substance, feed, or water, that is administered to the test system in the course of a study for the purpose of establishing a basis for comparison with the test substance for chemical or biological measurements.

EPA means the U.S. Environmental Protection Agency.

Experimental start date means the first date the test substance is applied to the test system.

Experimental termination date means the last date on which data are collected directly from the study.

FDA means the U.S. Food and Drug Administration.

Person includes an individual, partnership, corporation, association, scientific or academic establishment, government agency, or organizational unit thereof, and any other legal entity.

Quality assurance unit means any person or organizational element, except the study director, designated by testing facility management to perform the duties relating to quality assurance of the studies.

Raw data means any laboratory worksheets, records, memoranda, notes, or exact copies thereof, that are the result of original observations and activities of a study and are necessary for the reconstruction and evaluation of the report of that study. In the event that exact transcripts of raw data have been prepared (e.g., tapes which have been transcribed verbatim, dated, and verified accurate by signature), the exact copy or exact transcript may be substituted for the original source as raw data. "Raw data" may include photographs, microfilm or microfiche copies, computer printouts, magnetic media, including dictated observations, and recorded data from automated instruments.

Reference substance means any chemical substance or mixture, or analytical standard, or material other than a test substance, feed, or water, that is administered to or used in analyzing the test system in the course of a study for the purposes of establishing a basis for comparison with the test substance for known chemical or biological measurements.

Specimen means any material derived from a test system for examination or analysis.

Sponsor means:

(1) A person who initiates and supports, by provision of financial or other resources, a study;

(2) A person who submits a study to the EPA in response to a TSCA section 4(a) test rule and/or a person who submits a study under a TSCA section 4 testing consent agreement or a TSCA section 5 rule or order to the extent the agreement, rule or order references this part; or

(3) A testing facility, if it both initiates and actually conducts the study.

Study means any experiment at one or more test sites, in which a test substance is studied in a test system under laboratory conditions or in the environment to determine or help predict its effects, metabolism, environmental and chemical fate, persistence, or other characteristics in humans, other living organisms, or media. The term "study" does not include basic exploratory studies carried out to determine whether a test substance or a test method has any potential utility.

Study completion date means the date the final report is signed by the study director.

Study director means the individual responsible for the overall conduct of a study.

Study initiation date means the date the protocol is signed by the study director.

Test substance means a substance or mixture administered or added to a test system in a study, which substance or mixture is used to develop data to meet the requirements of a TSCA section 4(a) test rule and/or is developed under a TSCA section 4 testing consent agreement or section 5 rule or order to the extent the agreement, rule or order references this part.

Test system means any animal, plant, microorganism, chemical or physical matrix, including but not limited to, soil or water, or components thereof, to which the test, control, or reference substance is administered or added for study. "Test system" also includes appropriate groups or components of the system not treated with the test, control, or reference substance.

Testing facility means a person who actually conducts a study, i.e., actually uses the test substance in a test system. "Testing facility" encompasses only those operational units that are being or have been used to conduct studies.

TSCA means the Toxic Substances Control Act (15 U.S.C. 2601 et seq.)

Vehicle means any agent which facilitates the mixture, dispersion, or solubilization of a test substance with a carrier.

§ 792.10 Applicability to studies performed under grants and contracts.

When a sponsor or other person utilizes the services of a consulting laboratory, contractor, or grantee to

perform all or a part of a study to which this part applies, it shall notify the consulting laboratory, contractor, or grantee that the service is, or is part of, a study that must be conducted in compliance with the provisions of this part.

§ 792.12 Statement of compliance or non-compliance.

Any person who submits to EPA a test required by a testing consent agreement or a test rule issued under section 4 of TSCA shall include in the submission a true and correct statement, signed by the sponsor and the study director, of one of the following types:

(a) A statement that the study was conducted in accordance with this part; or

(b) A statement describing in detail all differences between the practices used in the study and those required by this part; or

(c) A statement that the person was not a sponsor of the study, did not conduct the study, and does not know whether the study was conducted in accordance with this part.

§ 792.15 Inspection of a testing facility.

(a) A testing facility shall permit an authorized employee or duly designated representative of EPA or FDA, at reasonable times and in a reasonable manner, to inspect the facility and to inspect (and in the case of records also to copy) all records and specimens required to be maintained regarding studies to which this part applies. The records inspection and copying requirements shall not apply to quality assurance unit records of findings and problems, or to actions recommended and taken, except the EPA may seek production of these records in litigation or formal adjudicatory hearings.

(b) EPA will not consider reliable for purposes of showing that a chemical substance or mixture does not present a risk of injury to health or the environment any data developed by a testing facility or sponsor that refuses to permit inspection in accordance with this part. The determination that a study will not be considered reliable does not, however, relieve the sponsor of a required test of any obligation under any applicable statute or regulation to submit the results of the study to EPA.

(c) Since a testing facility is a place where chemicals are stored or held, it is subject to inspection under section 11 of TSCA.

§ 792.17 Effects of non-compliance.

(a) The sponsor or any other person who is conducting or has conducted a test to fulfill the requirements of a testing consent agreement or a test rule issued under section 4 of TSCA will be in violation of section 15 of TSCA if:

(1) The test is not being or was not conducted in accordance with any requirement of this part;

(2) Data or information submitted to EPA under this part (including the statement required by § 792.12) include information or data that are false or misleading, contain significant omissions, or otherwise do not fulfill the requirements of this part; or

(3) Entry in accordance with § 792.15 for the purpose of auditing test data or inspecting test facilities is denied. Persons who violate the provisions of this part may be subject to civil or criminal penalties under section 16 of TSCA, legal action in United States district court under section 17 of TSCA, or criminal prosecution under 18 U.S.C. 2 or 1001.

(b) EPA, at its discretion, may not consider reliable for purposes of showing that a chemical substance or mixture does not present a risk of injury to health or the environment any study which was not conducted in accordance with this part. EPA, at its discretion, may rely upon such studies for purposes of showing adverse effects. The determination that a study will not be considered reliable does not, however, relieve the sponsor of a required test of the obligation under any applicable statute or regulation to submit the results of the study to EPA.

(c) If data submitted to fulfill a requirement of a testing consent agreement or a test rule issued under section 4 of TSCA are not developed in accordance with this part, EPA may determine that the sponsor has not fulfilled its obligations under section 4 of TSCA and may require the sponsor to develop data in accordance with the requirements of this part in order to satisfy such obligations.

Subpart B—Organization and Personnel

§ 792.29 Personnel.

(a) Each individual engaged in the conduct of or responsible for the supervision of a study shall have education, training, and experience, or combination thereof, to enable that individual to perform the assigned functions.

(b) Each testing facility shall maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

(c) There shall be a sufficient number of personnel for the timely and proper conduct of the study according to the protocol.

(d) Personnel shall take necessary personal sanitation and health precautions designed to avoid contamination of test, control, and reference substances and test systems.

(e) Personnel engaged in a study shall wear clothing appropriate for the duties they perform. Such clothing shall be changed as often as necessary to prevent microbiological, radiological, or chemical contamination of test systems and test, control, and reference substances.

(f) Any individual found at any time to have an illness that may adversely affect the quality and integrity of the study shall be excluded from direct contact with test systems, test, control, and reference substances and any other operation or function that may adversely affect the study until the condition is corrected. All personnel shall be instructed to report to their immediate supervisors any health or medical conditions that may reasonably be considered to have an adverse effect on a study.

§ 792.31 Testing facility management.

For each study, testing facility management shall:

(a) Designate a study director as described in § 792.33 before the study is initiated.

(b) Replace the study director promptly if it becomes necessary to do so during the conduct of a study.

(c) Assure that there is a quality assurance unit as described in § 792.35.

(d) Assure that test, control, and reference substances or mixtures have been appropriately tested for identity, strength, purity, stability, and uniformity, as applicable.

(e) Assure that personnel, resources, facilities, equipment, materials and methodologies are available as scheduled.

(f) Assure that personnel clearly understand the functions they are to perform.

(g) Assure that any deviations from these regulations reported by the quality assurance unit are communicated to the study director and corrective actions are taken and documented.

§ 729.33 Study director.

For each study, a scientist or other professional of appropriate education, training, and experience, or combination thereof, shall be identified as the study director. The study director has overall responsibility for the technical conduct of the study, as well as for the interpretation, analysis, documentation,

and reporting of results, and represents the single point of study control. The study director shall assure that:

(a) The protocol, including any change, is approved as provided by § 792.120 and is followed.

(b) All experimental data, including observations of unanticipated responses of the test system are accurately recorded and verified.

(c) Unforeseen circumstances that may affect the quality and integrity of the study are noted when they occur, and corrective action is taken and documented.

(d) Test systems are as specified in the protocol.

(e) All applicable good laboratory practice regulations are followed.

(f) All raw data, documentation, protocols, specimens, and final reports are transferred to the archives during or at the close of the study.

§ 792.35 Quality assurance unit.

(a) A testing facility shall have a quality assurance unit which shall be responsible for monitoring each study to assure management that the facilities, equipment, personnel, methods, practices, records, and controls are in conformance with the regulations in this part. For any given study, the quality assurance unit shall be entirely separate from and independent of the personnel engaged in the direction and conduct of that study. The quality assurance unit shall conduct inspections and maintain records appropriate to the study.

(b) The quality assurance unit shall:

(1) Maintain a copy of a master schedule sheet of all studies conducted at the testing facility indexed by test substance and containing the test system, nature of study, date study was initiated, current status of each study, identity of the sponsor, and name of the study director.

(2) Maintain copies of all protocols pertaining to all studies for which the unit is responsible.

(3) Inspect each study at intervals adequate to ensure the integrity of the study and maintain written and properly signed records of each periodic inspection showing the date of the inspection, the study inspected, the phase or segment of the study inspected, the person performing the inspection, findings and problems, action recommended and taken to resolve existing problems, and any scheduled date for re-inspection. Any problems which are likely to affect study integrity found during the course of an inspection shall be brought to the attention of the study director and management immediately.

(4) Periodically submit to management and the study director written status reports on each study, noting any problems and the corrective actions taken.

(5) Determine that no deviations from approved protocols or standard operating procedures were made without proper authorization and documentation.

(6) Review the final study report to assure that such report accurately describes the methods and standard operating procedures, and that the reported results accurately reflect the raw data of the study.

(7) Prepare and sign a statement to be included with the final study report which shall specify the dates inspections were made and findings reported to management and to the study director.

(c) The responsibilities and procedures applicable to the quality assurance unit, the records maintained by the quality assurance unit, and the method of indexing such records shall be in writing and shall be maintained. These items including inspection dates, the study inspected, the phase or segment of the study inspected, and the name of the individual performing the inspection shall be made available for inspection to authorized employees or duly designated representatives of EPA or FDA.

(d) An authorized employee or a duly designated representative of EPA or FDA shall have access to the written procedures established for the inspection and may request testing facility management to certify that inspections are being implemented, performed, documented, and followed up in accordance with this paragraph.

Subpart C—Facilities

§ 792.41 General.

Each testing facility shall be of suitable size and construction to facilitate the proper conduct of studies. Testing facilities which are not located within an indoor controlled environment shall be of suitable location to facilitate the proper conduct of studies. Testing facilities shall be designed so that there is a degree of separation that will prevent any function or activity from having an adverse effect on the study.

§ 792.43 Test system care facilities.

(a) A testing facility shall have a sufficient number of animal rooms or other test system areas, as needed, to ensure: proper separation of species or test systems, isolation of individual projects, quarantine or isolation of animals or other test systems, and routine or specialized housing of animals or other test systems.

(1) In tests with plants or aquatic animals, proper separation of species can be accomplished within a room or area by housing them separately in different chambers or aquaria. Separation of species is unnecessary where the protocol specifies the simultaneous exposure of two or more species in the same chamber, aquarium, or housing unit.

(2) Aquatic toxicity tests for individual projects shall be isolated to the extent necessary to prevent cross-contamination of different chemicals used in different tests.

(b) A testing facility shall have a number of animal rooms or other test system areas separate from those described in paragraph (a) of this section to ensure isolation of studies being done with test systems or test, control, and reference substances known to be biohazardous, including volatile substances, aerosols, radioactive materials, and infectious agents.

(c) Separate areas shall be provided, as appropriate, for the diagnosis, treatment, and control of laboratory test system diseases. These areas shall provide effective isolation for the housing of test systems either known or suspected of being diseased, or of being carriers of disease, from other test systems.

(d) Facilities shall have proper provisions for collection and disposal of contaminated water, soil, or other spent materials. When animals are housed, facilities shall exist for the collection and disposal of all animal waste and refuse or for safe sanitary storage of waste before removal from the testing facility. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, disease hazards, and environmental contamination.

(e) Facilities shall have provisions to regulate environmental conditions (e.g., temperature, humidity, photoperiod) as specified in the protocol.

(f) For marine test organisms, an adequate supply of clean sea water or artificial sea water (prepared from deionized or distilled water and sea salt mixture) shall be available. The ranges of composition shall be as specified in the protocol.

(g) For freshwater organisms, an adequate supply of clean water of the appropriate hardness, pH, and temperature, and which is free of contaminants capable of interfering with the study shall be available as specified in the protocol.

(h) For plants, an adequate supply of soil of the appropriate composition, as specified in the protocol, shall be available as needed.

§ 792.45 Test system supply facilities.

(a) There shall be storage areas, as needed, for feed, nutrients, soils, bedding, supplies, and equipment. Storage areas for feed, nutrients, soils, and bedding shall be separated from areas where the test systems are located and shall be protected against infestation or contamination. Perishable supplies shall be preserved by appropriate means.

(b) When appropriate, plant supply facilities shall be provided. These include:

(1) Facilities, as specified in the protocol, for holding, culturing, and maintaining algae and aquatic plants.

(2) Facilities, as specified in the protocol, for plant growth, including but not limited to, greenhouses, growth chambers, light banks, and fields.

(c) When appropriate, facilities for aquatic animal tests shall be provided. These include but are not limited to aquaria, holding tanks, ponds, and ancillary equipment, as specified in the protocol.

§ 792.47 Facilities for handling test, control, and reference substances.

(a) As necessary to prevent contamination or mixups, there shall be separate areas for:

(1) Receipt and storage of the test, control, and reference substances.

(2) Mixing of the test, control, and reference substances with a carrier, e.g., feed.

(3) Storage of the test, control, and reference substance mixtures.

(b) Storage areas for test, control, and/or reference substance and for test, control, and/or reference mixtures shall be separate from areas housing the test systems and shall be adequate to preserve the identity, strength, purity, and stability of the substances and mixtures.

§ 792.49 Laboratory operation areas.

Separate laboratory space and other space shall be provided, as needed, for the performance of the routine and specialized procedures required by studies.

§ 792.51 Specimen and data storage facilities.

Space shall be provided for archives, limited to access by authorized personnel only, for the storage and retrieval of all raw data and specimens from completed studies.

Subpart D—Equipment

§ 792.61 Equipment design.

Equipment used in the generation, measurement, or assessment of data and equipment used for facility environmental control shall be of appropriate design and adequate capacity to function according to the protocol and shall be suitably located for operation, inspection, cleaning, and maintenance.

§ 792.63 Maintenance and calibration of equipment.

(a) Equipment shall be adequately inspected, cleaned, and maintained. Equipment used for the generation, measurement, or assessment of data shall be adequately tested, calibrated, and/or standardized.

(b) The written standard operating procedures required under § 792.81(b)(11) shall set forth in sufficient detail the methods, materials, and schedules to be used in the routine inspection, cleaning, maintenance, testing, calibration, and/ or standardization of equipment, and shall specify, when appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The written standard operating procedures shall designate the person responsible for the performance of each operation.

(c) Written records shall be maintained of all inspection, maintenance, testing, calibrating, and/or standardizing operations. These records, containing the date of the operation, shall describe whether the maintenance operations were routine and followed the written standard operating procedures. Written records shall be kept of nonroutine repairs performed on equipment as a result of failure and malfunction. Such records shall document the nature of the defect, how and when the defect was discovered, and any remedial action taken in response to the defect.

Subpart E—Testing Facilities Operation

§ 792.81 Standard operating procedures.

(a) A testing facility shall have standard operating procedures in writing, setting forth study methods that management is satisfied are adequate to insure the quality and integrity of the data generated in the course of a study. All deviations in a study from standard operating procedures shall be authorized by the study director and shall be documented in the raw data. Significant changes in established standard operating procedures shall be properly authorized in writing by management.

(b) Standard operating procedures shall be established for, but not limited to, the following:

(1) Test system room preparation.

(2) Test system care.

(3) Receipt, identification, storage, handling, mixing, and method of sampling of the test, control, and reference substances.

(4) Test system observations.

(5) Laboratory or other tests.

(6) Handling of test systems found moribund or dead during study.

(7) Necropsy of test systems or postmortem examination of test systems.

(8) Collection and identification of specimens.

(9) Histopathology.

(10) Data handling, storage and retrieval.

(11) Maintenance and calibration of equipment.

(12) Transfer, proper placement, and identification of test systems.

(c) Each laboratory or other study area shall have immediately available manuals and standard operating procedures relative to the laboratory or field procedures being performed. Published literature may be used as a supplement to standard operating procedures.

(d) A historical file of standard operating procedures, and all revisions thereof, including the dates of such revisions, shall be maintained.

§ 792.83 Reagents and solutions.

All reagents and solutions in the laboratory areas shall be labeled to indicate identity, titer or concentration, storage requirements, and expiration date. Deteriorated or outdated reagents and solutions shall not be used.

§ 792.90 Animal and other test system care.

(a) There shall be standard operating procedures for the housing, feeding, handling, and care of animals and other test systems.

(b) All newly received test systems from outside sources shall be isolated and their health status or appropriateness for the study shall be evaluated. This evaluation shall be in accordance with acceptable veterinary medical practice or scientific methods.

(c) At the initiation of a study, test systems shall be free of any disease or condition that might interfere with the purpose or conduct of the study. If during the course of the study, the test systems contract such a disease or condition, the diseased test systems should be isolated, if necessary. These test systems may be treated for disease

or signs of disease provided that such treatment does not interfere with the study. The diagnosis, authorization of treatment, description of treatment, and each date of treatment shall be documented and shall be retained.

(d) Warm-blooded animals, adult reptiles, and adult terrestrial amphibians used in laboratory procedures that require manipulations and observations over an extended period of time, or in studies that require these test systems to be removed from and returned to their test system-housing units for any reason (e.g., cage cleaning, treatment, etc.), shall receive appropriate identification (e.g., tattoo, color code, ear tag, ear punch, etc.). All information needed to specifically identify each test system within the test system-housing unit shall appear on the outside of that unit. Suckling mammals and juvenile birds are excluded from the requirement of individual identification unless otherwise specified in the protocol.

(e) Except as specified in paragraph (e)(1) of this section, test systems of different species shall be housed in separate rooms when necessary. Test systems of the same species, but used in different studies, should not ordinarily be housed in the same room when inadvertent exposure to test, control, or reference substances or test system mixup could affect the outcome of either study. If such mixed housing is necessary, adequate differentiation by space and identification shall be made.

(1) Plants, invertebrate animals, aquatic vertebrate animals, and organisms that may be used in multispecies tests need not be housed in separate rooms, provided that they are adequately segregated to avoid mixup and cross contamination.

(2) [Reserved]

(f) Cages, racks, pens, enclosures, aquaria, holding tanks, ponds, growth chambers, and other holding, rearing, and breeding areas, and accessory equipment, shall be cleaned and sanitized at appropriate intervals.

(g) Feed, soil, and water used for the test systems shall be analyzed periodically to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed, soil, or water are not present at levels above those specified in the protocol. Documentation of such analyses shall be maintained as raw data.

(h) Bedding used in animal cages or pens shall not interfere with the purpose or conduct of the study and shall be changed as often as necessary to keep the animals dry and clean.

(i) If any pest control materials are used, the use shall be documented. Cleaning and pest control materials that interfere with the study shall not be used.

(j) All plant and animal test systems shall be acclimatized to the environmental conditions of the test, prior to their use in a study.

Subpart F—Test, Control, and Reference Substances

§ 792.105 Test, control, and reference substance characterization.

(a) The identity, strength, purity, and composition, or other characteristics which will appropriately define the test, control, or reference substance shall be determined for each batch and shall be documented before its use in a study. Methods of synthesis, fabrication, or derivation of the test, control, or reference substance shall be documented by the sponsor or the testing facility, and such location of documentation shall be specified.

(b) When relevant to the conduct of the study the solubility of each test, control, or reference substance shall be determined by the testing facility or the sponsor before the experimental start date. The stability of the test, control or reference substance shall be determined before the experimental start date or concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(c) Each storage container for a test, control, or reference substance shall be labeled by name, chemical abstracts service number (CAS) or code number, batch number, expiration date, if any, and, where appropriate, storage conditions necessary to maintain the identity, strength, purity, and composition of the test, control, or reference substance. Storage containers shall be assigned to a particular test substance for the duration of the study.

(d) For studies of more than 4 weeks experimental duration, reserve samples from each batch of test, control, and reference substances shall be retained for the period of time provided by § 792.195.

(e) The stability of test, control, and reference substances under storage conditions at the test site shall be known for all studies.

§ 792.107 Test, control, and reference substance handling.

Procedures shall be established for a system for the handling of the test, control, and reference substances to ensure that:

(a) There is proper storage.

(b) Distribution is made in a manner designed to preclude the possibility of contamination, deterioration, or damage.

(c) Proper identification is maintained throughout the distribution process.

(d) The receipt and distribution of each batch is documented. Such documentation shall include the date and quantity of each batch distributed or returned.

§ 792.113 Mixtures of substances with carriers.

(a) For each test, control, or reference substance that is mixed with a carrier, tests by appropriate analytical methods shall be conducted:

(1) To determine the uniformity of the mixture and to determine, periodically, the concentration of the test, control, or reference substance in the mixture.

(2) When relevant to the conduct of the experiment, to determine the solubility of each test, control, or reference substance in the mixture by the testing facility or the sponsor before the experimental start date.

(3) To determine the stability of the test, control or reference substance in the mixture before the experimental start date or concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(b) Where any of the components of the test, control, or reference substance carrier mixture has an expiration date, that date shall be clearly shown on the container. If more than one component has an expiration date, the earliest date shall be shown.

(c) If a vehicle is used to facilitate the mixing of a test substance with a carrier, assurance shall be provided that the vehicle does not interfere with the integrity of the test.

Subpart G—Protocol for and Conduct of a Study

§ 792.120 Protocol.

(a) Each study shall have an approved written protocol that clearly indicates the objectives and all methods for the conduct of the study. The protocol shall contain but shall not necessarily be limited to the following information:

(1) A descriptive title and statement of the purpose of the study.

(2) Identification of the test, control, and reference substance by name, chemical abstracts service (CAS) number or code number.

(3) The name and address of the sponsor and the name and address of the testing facility at which the study is being conducted.

(4) The proposed experimental start and termination dates.

(5) Justification for selection of the test system.

(6) Where applicable, the number, body weight, sex, source of supply, species, strain, substrain, and age of the test system.

(7) The procedure for identification of the test system.

(8) A description of the experimental design, including methods for the control of bias.

(9) Where applicable, a description and/or identification of the diet used in the study as well as solvents, emulsifiers and/or other materials used to solubilize or suspend the test, control, or reference substances before mixing with the carrier. The description shall include specifications for acceptable levels of contaminants that are reasonably expected to be present in the dietary materials and are known to be capable of interfering with the purpose or conduct of the study if present at levels greater than established by the specifications.

(10) The route of administration and the reason for its choice.

(11) Each dosage level, expressed in milligrams per kilogram of body or test system weight or other appropriate units, of the test, control, or reference substance to be administered and the method and frequency of administration.

(12) The type and frequency of tests, analyses, and measurements to be made.

(13) The records to be maintained.

(14) The date of approval of the protocol by the sponsor and the dated signature of the study director.

(15) A statement of the proposed statistical method.

(b) All changes in or revisions of an approved protocol and the reasons therefor shall be documented, signed by the study director, dated, and maintained with the protocol.

§ 792.130 Conduct of a study.

(a) The study shall be conducted in accordance with the protocol.

(b) The test systems shall be monitored in conformity with the protocol.

(c) Specimens shall be identified by test system, study, nature, and date of collection. This information shall be located on the specimen container or shall accompany the specimen in a manner that precludes error in the recording and storage of data.

(d) In animal studies where histopathology is required, records of gross findings for a specimen from postmortem observations shall be available to a pathologist when examining that specimen histopathologically.

(e) All data generated during the conduct of a study, except those that are generated by automated data collection systems, shall be recorded directly, promptly, and legibly in ink. All data entries shall be dated on the day of entry and signed or initialed by the person entering the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or identified at the time of the change. In automated data collection systems, the individual responsible for direct data input shall be identified at the time of data input. Any change in automated data entries shall be made so as not to obscure the original entry, shall indicate the reason for change, shall be dated, and the responsible individual shall be identified.

§ 792.135 Physical and chemical characterization studies.

(a) All provisions of the GLPs shall apply to physical and chemical characterization studies designed to determine stability, solubility, octanol water partition coefficient, volatility, and persistence (such as biodegradation, photodegradation, and chemical degradation studies).

(b) The following GLP standards shall not apply to studies designed to determine physical and chemical characteristics of a test, control, or reference substance:

§ 792.31 (c), (d), and (g)
§ 792.35 (b) and (c)
§ 792.43
§ 792.45
§ 792.47
§ 792.49
§ 792.81(b) (1), (2), (6) through (9), and (12)
§ 792.90
§ 792.105 (a) through (d)
§ 792.113
§ 792.120(a) (5) through (12), and (15)
§ 792.185(a) (5) through (8), (10), (12), and (14)
§ 792.195 (c) and (d)

Subparts H and I—[Reserved]

Subpart J—Records and Reports

§ 792.185 Reporting of study results.

(a) A final report shall be prepared for each study and shall include, but not necessarily be limited to, the following:

(1) Name and address of the facility performing the study and the dates on which the study was initiated and was completed, terminated, or discontinued.

(2) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(3) Statistical methods employed for analyzing the data.

(4) The test, control, and reference substances identified by name, chemical abstracts service (CAS) number or code number, strength, purity, and composition, or other appropriate characteristics.

(5) Stability, and when relevant to the conduct of the study, the solubility of the test, control, and reference substances under the conditions of administration.

(6) A description of the methods used.

(7) A description of the test system used. Where applicable, the final report shall include the number of animals or other test organisms used, sex, body weight range, source of supply, species, strain and substrain, age, and procedure used for identification.

(8) A description of the dosage, dosage regimen, route of administration, and duration.

(9) A description of all circumstances that may have affected the quality or integrity of the data.

(10) The name of the study director, the names of other scientists or professionals and the names of all supervisory personnel, involved in the study.

(11) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis.

(12) The signed and dated reports of each of the individual scientists or other professionals involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(13) The locations where all specimens, raw data, and the final report are to be stored.

(14) The statement prepared and signed by the quality assurance unit as described in § 792.35(b)(7).

(b) The final report shall be signed and dated by the study director.

(c) Corrections or additions to a final report shall be in the form of an amendment by the study director. The amendment shall clearly identify that part of the final report that is being added to or corrected and the reasons for the correction or addition, and shall be signed and dated by the person responsible. Modification of a final report to comply with the submission requirements of EPA does not constitute a correction, addition, or amendment to a final report.

(d) A copy of the final report and of any amendment to it shall be maintained by the sponsor and the test facility.

§ 792.190 Storage and retrieval of records and data.

(a) All raw data, documentation, records, protocols, specimens, and final reports generated as a result of a study shall be retained. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. Correspondence and other documents relating to interpretation and evaluation of data, other than those documents contained in the final report, also shall be retained.

(b) There shall be archives for orderly storage and expedient retrieval of all raw data, documentation, protocols, specimens, and interim and final reports. Conditions of storage shall minimize deterioration of the documents or specimens in accordance with the requirements for the time period of their retention and the nature of the documents of specimens. A testing facility may contract with commercial archives to provide a repository for all material to be retained. Raw data and specimens may be retained elsewhere provided that the archives have specific reference to those other locations.

(c) An individual shall be identified as responsible for the archives.

(d) Only authorized personnel shall enter the archives.

(e) Material retained or referred to in the archives shall be indexed to permit expedient retrieval.

§ 792.195 Retention of records.

(a) Record retention requirements set forth in this section do not supersede the record retention requirements of any other regulations in this subchapter.

(b)(1) Except as provided in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for a period of at least ten years following the effective date of the applicable final test rule.

(2) In the case of negotiated testing agreements, each agreement will contain a provision that, except as provided in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for a period of at least ten years following the publication date of the acceptance of a negotiated test agreement.

(3) In the case of testing submitted under section 5, except for those items listed in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for a period of at least five years following the date on which the results of the study are submitted to the agency.

(c) Wet specimens, samples of test, control, or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage, shall be retained only as long as the quality of the preparation affords evaluation. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, biological fluids, do not need to be retained after quality assurance verification. In no case shall retention be required for longer periods than those set forth in paragraph (b) of this section.

(d) The master schedule sheet, copies of protocols, and records of quality assurance inspections, as required by § 792.35(c) shall be maintained by the quality assurance unit as an easily accessible system of records for the period of time specified in paragraph (b) of this section.

(e) Summaries of training and experience and job descriptions required to be maintained by § 792.29(b) may be retained along with all other testing facility employment records for the length of time specified in paragraph (b) of this section.

(f) Records and reports of the maintenance and calibration and inspection of equipment, as required by § 792.63 (b) and (c), shall be retained for the length of time specified in paragraph (b) of this section.

(g) If a facility conducting testing or an archive contracting facility goes out of business, all raw data, documentation, and other material specified in this section shall be transferred to the archives of the sponsor of the study. The EPA shall be notified in writing of such a transfer.

(h) Specimens, samples, or other non-documentary materials need not be retained after EPA has notified in writing the sponsor or testing facility holding the materials that retention is no longer required by EPA. Such notification normally will be furnished upon request after EPA or FDA has completed an audit of the particular study to which the materials relate and EPA has concluded that the study was conducted in accordance with this part.

(i) Records required by this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records.

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August 17, 1989

Part IV

Environmental Protection Agency

40 CFR Part 160

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Good Laboratory Practice Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 160

[OPP-300165A; FRL-3518-2]

RIN 2070-AB68

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Good Laboratory Practice Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule that expands the regulations to require compliance with Good Laboratory Practice (GLP) standards for testing conducted in the field and for such disciplines of testing as ecological effects, chemical fate, residue chemistry, and, as required to be submitted by 40 CFR 158.640, product performance (efficacy testing). EPA is amending these regulations to ensure the quality and integrity of all data submitted to EPA in conjunction with pesticide product registration, or other marketing and research permits. EPA is also amending the FIFRA GLP standards to incorporate many of the changes made by the Food and Drug Administration (FDA) to its GLP regulations (52 FR 33768, September 4, 1987; 21 CFR Part 58).

DATE: Effective: This rule becomes effective on October 16, 1989. Compliance: All studies conducted, initiated, or supported after the effective date of this rule shall be subject to these regulations.

FOR FURTHER INFORMATION CONTACT: Stephen Howie, Office of Compliance Monitoring (EN-342), Rm. E-707B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-7825.

SUPPLEMENTARY INFORMATION: Following is an index to the remainder of this preamble:

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I. Introduction

EPA is amending the FIFRA GLP standards (40 CFR Part 160) to incorporate many of the changes made by the Food and Drug Administration to its GLP regulations.

A. Legal Authority

These standards are promulgated under the authority of sections 3, 4, 5, 6, 8, 18, 24(c), and 25(a) of FIFRA, 7 U.S.C. 136 et seq., as amended, sections 408, 409, and 701 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Reorganization Plan No. 3 of 1970.

B. Background

EPA originally published FIFRA GLP standards in the **Federal Register** of November 29, 1983 (48 FR 53946), which were codified as 40 CFR part 160. At the same time, EPA published GLP standards applicable to testing required under the Toxic Substances Control Act (TSCA, 48 FR 53922, 40 CFR part 792). These regulations were promulgated in response to investigations by EPA and FDA during the mid-1970s which revealed that some studies submitted to the Agencies had not been conducted in accordance with acceptable laboratory practices. Some studies had been conducted so poorly that the resulting data could not be relied upon in EPA's regulatory decision-making process. For instance, some studies had been submitted which did not adhere to specified protocols, were conducted by underqualified personnel and supervisors, or were not adequately monitored by study sponsors. In some cases results were selectively reported, underreported, or fraudulently reported. In addition, it was discovered that some testing facilities displayed poor animal care procedures and inadequate record-keeping techniques. The FIFRA GLP standards specify minimum practices and procedures which must be followed in order to ensure the quality and integrity of data submitted to EPA in support of a research or marketing permit for a pesticide product.

When EPA published its final FIFRA and TSCA GLP standards in the **Federal Register** of November 29, 1983, EPA sought to harmonize the requirements and language with those regulations promulgated by the FDA in the **Federal Register** of December 22, 1978 (43 FR 60013), and codified as 21 CFR part 58. Differences between the two Agencies' current GLP regulations exist only to the extent necessary to reflect the Agencies' different statutory responsibilities under TSCA, FIFRA, and the Federal Food, Drug and Cosmetic Act (FFDCA). Similar to the FDA GLP regulations, the FIFRA and TSCA GLP standards delineate standards for studies designed to determine the health effects of a test substance; however, the TSCA GLP standards also contain provisions related to environmental testing (i.e., ecological effects and chemical fate).

Compliance with EPA's FIFRA and TSCA GLP standards has been monitored through a program of laboratory inspections and study audits coordinated between EPA and FDA. Under an Interagency Agreement originated in 1978, FDA carries out GLP inspections at laboratories which conduct health effects testing. EPA primarily performs GLP inspections for environmental laboratories and conducts data audits for health effects and environmental studies.

After a thorough review of its GLP regulations and compliance program, FDA concluded that some of the provisions of the GLP regulations needed to be clarified, amended, or deleted to reduce the regulatory burden on testing facilities. Accordingly, FDA revised its GLP regulations in the **Federal Register** of September 4, 1987 (52 FR 33768). These GLP revisions are intended to simplify the regulations without compromising study integrity.

EPA agrees with FDA that many provisions of the GLP regulations can be streamlined without compromising the goals of the GLP standards. Therefore, EPA is amending the FIFRA GLP standards to incorporate many of the changes made by FDA to its revised GLP regulations. In addition, EPA is expanding the scope of the FIFRA GLP standards to include the environmental testing provisions currently found in the TSCA GLP standards. EPA's revision to the FIFRA GLP standards also extends their scope to include product performance data (efficacy testing) as currently required to be submitted by 40 CFR 158.640. In summary, the FIFRA GLP standards will allow EPA to ensure the quality and integrity of all data submitted in support of pesticide product research or marketing permits. Elsewhere in this **Federal Register**, EPA is making similar changes to the TSCA GLP standards.

C. Consistency With FDA GLP Regulations

It is EPA's policy to minimize the regulatory burden on the public which might arise from conflicting requirements promulgated under different regulatory authorities. In keeping with this policy, the final FIFRA 1983 GLP standards, 40 CFR part 160, followed the format and, with few

exceptions, the wording of FDA's final GLP regulations, 21 CFR part 58. Differences between the EPA and FDA GLP regulations were based upon varying needs and responsibilities under each Agency's regulatory statutes. This revision to the FIFRA GLP standards follows this same policy by conforming to many of the changes FDA made to its GLP regulations, published in the Federal Register of September 4, 1987 (52 FR 33768). EPA has varied from FDA's revised GLP regulations only when necessary due to EPA's statutory responsibilities. The most significant differences between the EPA and the FDA revised GLP regulations are the scope of the testing and test systems affected.

More specifically, EPA is requiring compliance with the FIFRA GLP standards for all studies submitted to EPA which are intended to support pesticide product research or marketing permits. Under the 1983 FIFRA GLP regulations EPA only required GLP compliance under FIFRA for health effects testing. However, unlike FDA, testing required by EPA in support of research or marketing permits may include ecological effects, environmental and chemical fate, and efficacy (as stipulated by 40 CFR 158.640 Product performance data requirements), as well as health effects testing. Therefore, in an effort to attain consistency in the quality and the integrity of all data submitted to the Agency, EPA has determined that it is necessary to expand the scope of the FIFRA GLP standards to require that all types of testing which are used to obtain data in support of research or marketing permits be conducted in accordance with the amended GLP standards that are required to be submitted under 40 CFR 158.640.

EPA's amended FIFRA GLP standards also vary from FDA's in their coverage of testing conducted in the field. To ensure the quality and integrity of all data submitted in support of research or marketing permits, EPA believes that GLP standards must apply whenever data collection occurs. Because many of the test data required by EPA under FIFRA are developed in the field, or more accurately in outdoor laboratories (i.e., ground water studies, air monitoring studies, degradation in soil, etc.), EPA is including field testing within the scope of the standards.

EPA's FIFRA GLP standards also differ from FDA's in the scope of the requirements provided for test system care facilities, test system supply facilities, and test system care. Because testing required by FDA is focused on health testing, in which animals are the central test system, it is appropriate for FDA's GLP regulations to focus on requirements for appropriate animal care facilities (21 CFR 58.43), adequate animal supply facilities (21 CFR 58.45), and proper animal care (21 CFR 58.90). However, the broad range of testing required by EPA may involve plants, soils, and microorganisms, as well as animals, for the primary test systems. To ensure the quality and integrity of all data submitted to EPA, § 160.43 Animal care facilities, § 160.45 Animal supply facilities, and § 160.90 Animal care are being expanded to cover facilities, handling, and care of all test systems. Accordingly, EPA is retitling these sections as follows: § 160.43 Test system care facilities, § 160.45 Test system supply facilities, and § 160.90 Animal and other test system care. Further, in most instances, EPA is replacing the term "animal," which is currently used in the FIFRA GLP standards, with the broader term "test system." Specifically, this change occurs in §§ 160.43, 160.45, 160.81, 160.90 and 160.120. These changes are further discussed in Unit II. of this preamble.

The remaining differences between the EPA and FDA GLP regulations are described in the preamble to this final rule and the preamble to the FIFRA GLP standards, published in the Federal Register of November 29, 1983 (48 FR 53946). EPA has coordinated this final rule with FDA and has considered public comments on the December 28, 1987 EPA proposal (52 FR 48920).

D. Publication of the Complete Rule

The entire FIFRA GLP rule (40 CFR part 160) is published in this notice to simplify interpretation and facilitate the use of this notice by the regulated community. The following lists the sections of 40 CFR part 160 that were changed from the 1983 rule:

Sections affected	Changes
160.3	"Batch," "Control substance," "Study," and "Test system," revised; "Test substance or mixture," removed; "Carrier," "Experimental start date," "Experimental termination date," "Reference substance," "Study completion date," "Study initiation date," "Test substance," and "Vehicle," added.
160.29	(d), (e), and (f) revised.
160.31	(b) and (d), revised.
160.35	(a), (b) (1), and (3), revised; (e), removed.
160.41	Revised.
160.43	Revised.
160.45	Revised.
160.47	Revised.
160.49	Revised.
160.53	Removed.
160.61	Revised.
160.63	(b), revised.
160.81	(b) (1), (2), (3), (5), (6), (7), and (12) and (c), revised.
160.90	Revised.
Subpart F	Heading revised.
160.105	Revised.
160.107	Heading and introductory text, revised.
160.113	Revised.
160.120	(a), revised.
160.130	(d) and (e), revised.
160.135	Added.
160.185	(a) (4) and (5), and (c), revised.
160.190	(a) and (e), revised.
160.195	(c), revised; (i) added.

II. Summary of Comments and Responses

EPA received 43 comment letters: 24 from manufacturers of pesticide products regulated by EPA, 8 from associations, 10 from testing or consulting laboratories, and 1 from another government agency. The majority of the comments supported the proposed changes, although numerous suggestions were made for additional revisions to parts of the 1983 FIFRA GLP regulations not subject to this rulemaking or modifications to the proposed changes. Comments that raised important policy questions, suggested modification to the essence of the proposed regulation, or required an individual response, are discussed below. Comments addressing changes to the GLP standards that were not proposed are not the subject of this rulemaking. However, all comments made have been placed in the public record.

A. General Provisions

1. *Scope—Comment:* EPA should specify exactly what categories of studies (especially efficacy) are covered under the revised GLP regulations since they are discussed in the preamble and will not appear at 40 CFR part 160 when the final rule is published.

Response: EPA intends GLP standards to cover all types of studies required to be submitted and does not feel it necessary to list each type.

Please note that EPA is developing additional product performance regulations. EPA plans to consider the impact that GLP standards will have on these new product performance requirements to determine if the full scope of the GLP standards should apply to studies performed to fulfill these requirements. Unless the GLP rule is modified to specifically exclude certain parts of product performance regulations, the full GLP rule will apply

to all existing and prospective product performance studies required under 40 CFR 158.640.

2. *Definitions*—a. *Batch.* The definition of "batch" is expanded to include reference substances. This was an omission in the proposed rule that is corrected in the final rule to maintain consistency with the use of the term in § 160.105(a).

b. *Carrier*—i. *Comment:* The word "systems" should replace the word "organisms" in the definition of "carrier," to be consistent with the term "test system."

Response: EPA concurs with the suggestion. To be consistent with the definition of "test systems," the word is changed accordingly.

ii. *Comment:* EPA should revise the list in parentheses that follows the word "material" in the definition of "carrier" to make it all inclusive.

Response: EPA has decided to add the phrase "including but not limited to * * *", to indicate that the list provides examples and is not meant to be all inclusive.

c. *Control substance*—i. *Comment:* Since "material" conveys a broader description than "substance" and is already used in definitions for "carrier," "control substance," and "reference substance," "chemical substance" should be changed to "chemical material" in the definition of "control substance."

Response: EPA does not believe that a change in terminology is needed to broaden the definition since the term "material" is already included in the present definition. The term "substance" must also be retained to maintain consistency with TSCA and the TSCA GLP standards.

ii. *Comment:* EPA should delete the phrase "for no-effect levels" in the definition of control substance. The definition as written is too narrow and excludes analytical chemistry (e.g., chemical fate, residue chemistry) operations where the term "control" has a meaning distinctly different from biological effects.

Response: Since the purpose of the analytical control is to establish eventually that none of the materials administered to the test system interfere with identification of the test substance and its degradate(s) and metabolite(s), EPA agrees that the terminology is too limiting and is replacing the phrase "for no-effect levels" with the phrase "for known chemical or biological measurements." The definition now reads: "Control substance means any chemical substance or mixture, or any other material other than a test substance, feed, or water, that is administered to the test system in the course of a study for the purpose of establishing a basis for comparison with the test substance for known chemical or biological measurements."

d. *Experimental start and termination dates—Comment:* These dates would be difficult to predict, especially for field studies, because they would be subject to natural or man-made conditions that cannot be controlled or anticipated. Since the dates would be subject to change, many protocol amendments would be required, thereby creating an undue administrative burden.

Response: The experimental start and termination dates specified in the protocol are merely proposed dates. Therefore if the actual experimental start or termination date is different from the proposed dates no protocol amendment shall be required.

e. *Reference substance—Comment:* If EPA intended the term "reference substance" to include analytical and calibration standards, then several other sections of the proposed rule which mention "reference substance," would also require the same types of records to be kept for analytical standards. This would constitute an excessive burden on management which would require maintaining various records that do not add any value to the study.

Response: The definition of reference substance is intended to include analytical reference standards. Therefore, EPA has modified the definition of "reference substance," as follows: "Reference substance means any chemical substance or mixture, analytical reference standard, or material, other than a test substance, feed, or water, that is administered to, or used, in analyzing the test system in the course of a study for purposes of establishing a basis for comparison with the test substance for known chemical or biological measurements." EPA believes this change eliminates any ambiguity in the definition.

EPA disagrees that inclusion of analytical reference standards in this part constitutes an excessive documentation burden or adds no value to the study. Documentation which supports defining analytical reference standards should not require excess paperwork since common laboratory practices already require assurance of the validity of standards in order to make certain that the measurements are accurate.

f. *Study*—i. *Comment:* "Basic exploratory studies" are excluded from GLP standards, but the results of such studies may be required to meet GLP standards, if included in support of research or marketing permits.

Response: EPA does not wish to discourage basic exploratory testing and does not explicitly require GLP standards for such tests even if the data are later submitted to EPA. However, if the data are to be used in sole support of a marketing permit such non-GLP studies may not be accepted. GLP standards are required when data is developed in the context of a study that is required to be submitted to EPA in support of a research or marketing permit. Where GLP standards were not followed in the case of a study performed with the original intent of exploratory testing, a GLP compliance statement should be included in the study report to indicate this.

ii. *Comment:* It is not clear what constitutes separate studies and what studies could be included under a single protocol. Specifically, is a test system located in several different geographical locations a single study or would each location by means of its particular requirements need to be a separate study?

Response: The protocol defines what the study entails. Therefore, if the test system for a specific study is located in different geographical locations, the protocol will describe the study as being located at the different sites. EPA is adding the phrase "at one or more test sites" to the definition of "study" to clarify the intent that more than one field site may be included in one study.

iii. *Comment:* The proposed definition of study would imply that each determination such as stability, solubility, octanol water partition coefficient, volatility, persistence, and other data point determinations would be separate studies with concomitant requirements such as protocols and quality assurance unit (QAU) inspections.

Response: EPA intends that QAU inspections as listed in § 160.35 be conducted at intervals adequate to ensure the integrity of the study for each determination such as stability, solubility, octanol water partition coefficient, volatility, persistence, and other data point determinations. However, if done as part of a larger study, then these determinations are covered under the larger study's protocol or standard operating procedure (SOP). If they are submitted to EPA as studies unto themselves, then they do require their own protocols.

iv. *Comment:* An experiment such as product chemistry which does not involve a test system cannot be considered a "study" and therefore would not be covered by GLP standards.

Response: Studies designed to determine the physical or chemical characteristics of a test substance are included within the scope of these regulations. Therefore, EPA intends to include product chemistry experiments in the definition of "study." This change is consistent with the definition of the term "study" as it now appears, and as it appears in the TSCA GLP standards at 40 CFR Part 792. In the case of product chemistry experiments, the test substance itself may be the test system.

v. *Comment:* The addition of the term "or in the environment" to the definition of "study" indicates that the change extends the proposed regulations to field studies. While it is necessary to ensure the validity of all data collected, the variety and special requirements of field research have not been addressed in the new rules.

Response: These regulations are intended to apply to all studies required to be submitted under FIFRA, including those conducted in the field. EPA recognizes that field studies vary and have special requirements, but believes that the development of protocols and SOPs by the testing facility provides adequate flexibility in this respect.

vi. *Comment:* Why are metabolism, product performance, environmental and chemical fate, persistence and residue listed in the definition of "study", but not toxicology data or data to assess hazards and product chemistry.

Response: The list is not meant to be limiting in any way. Data to assess toxicology, hazards and product chemistry are included under "effects" and "other characteristics" under the new definition of "study".

vii. *Comment:* "Prospectively" should not be deleted from the definition of study. If the essence of GLPs requires a carefully planned study and the proposed rule is very strict about documentation that must be completed prior to the experimental start date, how can the GLP standards also apply to studies that were generated without a protocol or advance planning, such as epidemiology.

Response: EPA disagrees with the comment. The term prospectively is deleted because EPA wishes all studies, including epidemiological studies where past exposure to a study population is determined or estimated retrospectively, to be performed under GLP standards. EPA recognizes that in such studies data used may not have been generated in conformance with FIFRA GLP standards. However, it is EPA's position that the epidemiological study itself can be conducted and submitted to EPA in accordance with the GLP standards. Retrospective aspects of such studies that are not performed according to GLP standards, for example, test system treatment, should be identified in the compliance statement submitted with the study report.

In addition, the types of studies potentially not covered by these regulations were expanded in the definition of "study" to include experiments involving test methods.

g. *Study initiation and completion date—Comment:* EPA should delete the definition of "study initiation date" and "study completion date," since these terms were not defined in the 1983 GLP standards. The dates will be included in the protocol and final report and do not need further emphasis.

Response: EPA believes that it is necessary to define the terms to differentiate them from "experimental start and termination" dates. These terms indicate the dates on which specific milestones occur during a study. The definition is necessary to clarify EPA's requirements, and to ensure consistency with FDA's GLP regulations (52 FR 33780).

The phrase "close of the study" as used in § 160.33(f), and the phrase "study is completed" as used in § 160.195(b)(3) both refer to the "study completion date." Therefore, as of the study completion date: (1) Under § 160.33(f), the study director must ensure that all raw data, documentation, protocols, specimens, and final reports are transferred to the archives; (2) after this date under § 160.185(c), corrections or additions to the final report must be in the form of an amendment by the study director under the procedures specified in that section; and (3) in the applicable situations described in § 160.195(b)(3), records must be maintained for a period of at least 2 years following the study completion date.

Furthermore, the phrase "study is initiated" as used in § 160.31(a), and the phrase "study was initiated" as used in § 160.35(b)(1) would refer to the "study initiation date." Therefore, as of the study initiation date: (1) Under § 160.31(a), the testing facility management would designate a study director; (2) under § 160.35(b)(1), the study would be entered on the master schedule sheet by the QAU; and (3) under § 160.120(b), after this date all changes or revisions in the protocol would be documented, signed by the study director, and dated. EPA also expects that as of the study initiation date, under § 160.31(e), the testing facility management would have ensured that personnel, resources, facilities, equipment, material, and methodologies are available as scheduled.

h. *Test system—Comment:* What constitutes the "test system" in tests of pre-emergent herbicides, soil pesticides, and product chemistry studies?

Response: The definition of "test system" includes the statement that it is "* * * any * * * chemical or physical matrix * * *", including subparts thereof that are treated with the test, control, or reference substance and also appropriate components of the system that are not treated. Therefore, test systems may include the soils that pesticides are applied to, and in the case of product chemistry, the test system may be the test substance itself.

EPA is including the term "reference," which was inadvertently omitted from the definition as it appeared in the proposed rule. In addition, EPA is replacing "e.g." in the parenthetical with "including but not limited to" in order to clarify that it is not our intent for the list to be all encompassing.

i. *Vehicle—Comment:* The definition of "vehicle" serves to clarify the GLP standards, but there has been no confusion based on the current standards and this change is contrary to EPA's stated objective of being consistent with FDA's GLP regulations.

Response: EPA believes that clarification is needed. The EPA GLP standards cover a larger number of types of studies and the need for clarification of the meaning of potentially ambiguous terms is greater.

B. Organization and Personnel

1. *Testing Facility Management—Comment:* The specific requirement to document the replacement of the study director as raw data should be retained. The "master schedule" should not be considered "raw data" as was indicated in the preamble [52 FR 48923] to the proposed rule.

Response: EPA deleted the requirement that the replacement of a study director must be documented as "raw data" to conform to the revised FDA GLP regulations. This is because replacement of the study director must be reflected on the master schedule sheet, which is a study record that must be retained.

In addition, the term "reference," which was inadvertently omitted in the proposed rule, has been added to § 160.31(d).

2. *Study Director—Comment:* Archiving the study records within a "reasonable period" after the study completion date, instead of at the close of the study as required by § 160.33(f),

would not impact on the integrity of the records.

Response: EPA believes that the requirement that all raw data, documentation, protocols, specimens, and final reports be transferred to the archives at a definitive time, i.e. the study completion date, is necessary. This assures an intact audit trail for the study.

3. *Quality assurance unit*—i. *Comment:* A QAU that is entirely separate from and independent of the personnel engaged in the conduct of the study creates an unjustified financial burden on some facilities. In some cases it would be impossible to establish a completely independent QAU with qualified personnel.

Response: As stated in the proposed rule (52 FR 48920), EPA does not require the QAU to be a fixed, permanently staffed unit whose only functions are to monitor the quality of a study. EPA is only concerned that there be a distinct separation of duties between those personnel involved with the conduct or direction of a study and those personnel performing quality assurance on the same study. Therefore, § 160.35(a) prohibits personnel from performing quality assurance activities on their own study. The regulations allow a study director for a particular study to serve as a part of the QAU or as the QAU for a different study. FDA noted (52 FR 33771) that it was aware that many small laboratories could not afford the operation of a permanently staffed QAU. EPA would like to point out that in those situations where there are different individuals performing the quality assurance functions for different studies, each individual is required to maintain that portion of the master schedule sheet which relates to the study being monitored. For this reason, EPA agrees with FDA's conclusion that the separation of functions on a study-by-study basis, as permitted in the existing and revised regulations, would provide effective quality assurance. In view of the potential gain to management, to sponsors, and to EPA, through the added assurance of well-conducted studies, the increased costs are thereby justified. EPA believes that its intent is more clearly indicated by the changes now being made.

ii. *Comment:* EPA should delete the requirement to index the master schedule by test substance, and the QAU should only be required to index the master schedule to facilitate retrieval of the information monitored.

Response: EPA acknowledges that a test facility may have several studies in progress on each test substance that is listed on the master schedule sheet. However, EPA concludes that deleting the requirement to index by test substance would be inappropriate, since the master schedule sheet is the mechanism through which the QAU can assure management that the facilities are satisfactory and there are adequate numbers of competent personnel available to perform the scheduled tasks. Furthermore, § 160.31(e) requires that management assure that study materials (e.g., test substances) are available as planned. Therefore, elimination of this requirement would hinder a major function of the master schedule sheet and hamper the conduct of a critical management role.

iii. *Comment:* Laboratory management should have the discretion to determine who enters the data into the master schedule, as long as the required information is listed.

Response: EPA believes that management retains such discretion since it is involved in determining the composition of the QAU and it provides an adequate number of such personnel (§§ 160.31(c) and (e)). The QAU is distinguished by training that ensures that QAU functions are properly conducted. As stated above, study personnel may belong to the QAU as long as they are not performing the QAU functions associated with studies they are involved in.

iv. *Comment:* Do all studies conducted by an analytical laboratory have to be listed on a master schedule, or just those studies that will be, or likely be, submitted to EPA?

Response: The GLP standards specifically exempt many product chemistry studies as described in § 160.135. The master schedule need only list those analytical chemistry studies that will be or will likely be submitted to EPA.

v. *Comment:* The requirement for inspection of each study under § 160.35(b)(3) regardless of duration is excessive for the quality assurance needed to address study integrity, especially where studies are performed by highly standardized procedures. The repetitive inspection of these types of studies would consume large amounts of time for both the study personnel and QAU staff. Auditing each study is not necessary to ensure the work is conducted in compliance with the regulations. Random sampling procedures should be allowed in selecting studies and phases of studies to inspect to decrease the work load and resource requirements of the QAU.

Response: EPA does not believe that a random inspection program would be an appropriate method of evaluating a study. Generally, random sampling provides an adequate means of quality control where analysis involves repetition or identical procedures. However, any assumption that the conduct of one phase of one study would be representative of another would be invalidated by the differences among study personnel and the operations they conduct. Furthermore, this requirement is not intended for all routine studies. Section 160.35(b) is among the exclusions for chemical and physical characterization studies as listed in § 160.135(b).

In conformance with the revised FDA GLP regulations (52 FR 33780), EPA modified the requirements of § 160.35(b)(3) to provide for inspections of a study on a schedule adequate to ensure the integrity of the study. The changes to this section will allow the QAU the necessary latitude to adjust its monitoring activities to meet the individual needs of each study. However, each study, no matter how short, must be inspected at least once while in progress. EPA expects that by allowing the QAU flexibility in designing a reasonable inspection schedule, the goal of ensuring the quality of the study can be best achieved.

vi. *Comment:* EPA indicates in the preamble to the proposed rule (§ 160.35(e), (52 FR 48923)) that all QAU records will now be routinely available to inspectors. Existing GLP standards treat certain QAU records as confidential, and explicitly state that the only QAU records to be reviewed by EPA auditors would be the master schedule (e.g., the inspection dates, study inspected, the phase or segment of the study inspected and the name of the individual performing the inspection). If QAU records for findings and corrective action are available on an auditor's request, QAUs would lose their effectiveness.

Response: EPA shares the concerns of the commenters that access to all parts of a QAU inspection would weaken the inspection system, and recognizes the need to maintain a degree of confidentiality. Therefore, records of findings and problems, as well as records of corrective action recommended and taken, are exempt from routine EPA inspections, except under special circumstances as indicated in § 160.15. However, EPA maintains that all other reports and records must be easily accessible and made available to EPA and FDA inspectors when requested as indicated in § 160.35(c).

C. Facilities

1. *General*—i. *Comment:* Outdoor testing facilities should not be under GLP standards since: (a) Outdoor test facilities will be conducting studies according to approved protocols; (b) ensuring suitability is highly subjective based on the diverse number of possible locations; (c) there is a concomitant lack of clear standards for determining suitability of locations. Procedures must be specified by EPA regarding the determination of suitability for locations, testing facilities, etc.

Despite best efforts, the choice could always be subject to criticism and even criminal liability based on a good faith Compliance Statement indicating GLP standards had been followed. Most outdoor testing is done to mimic normal agricultural conditions which are specific for the test substance and use being proposed. Therefore, the determination of whether the size, construction or location of a facility is suitable for a study is a technical issue, and is not within the scope of the GLP regulation and would be considered in the experimental design of the protocol.

Response: In cases where an EPA-approved protocol establishes test locations, that protocol would satisfy GLP requirements. EPA considers any site to be the testing facility wherever testing is undertaken to generate data required to be submitted to EPA. The conditions required by the protocol are not necessarily conducive to artificial manipulation in the field, or to other outdoor testing facilities. Therefore, ensuring the suitability of the location of these types of testing facilities is both a valid and necessary part of protocols approved by EPA.

ii. *Comment:* The design of the individual scientist could be dictated by § 160.41 since a "testing facility" (definition from § 160.3) means "a person who actually conducts a study * * *" The term "test site" should be defined to refer to the actual location of a given "study system." "Testing facility" could then be used as currently defined and refer to an individual (mobile development scientist or scientist working from a testing farm facility).

Response: The definition of "person" in this Part refers to the legal entity responsible for testing, including organizational units. Consequently, it does not specifically indicate an individual scientist.

2. *Test system care facilities*—i. *Comment:* Instead of expanding the original document to fit all test systems, the old rules should be left as is, and a statement added to cover non-animal test systems.

Response: EPA disagrees with the comment and believes that specific changes of the old rule are necessary to avoid ambiguity concerning the meaning of non-animal test systems.

ii. *Comment:* Section 160.43(a)(2) and (b), (e), (f), (g), and (h) should be deleted because EPA has already stated that these GLP requirements will be applicable to all types of testing. It is not necessary to add the four new paragraphs detailing specific requirements of environmental conditions for aquatic organisms and plants.

Response: EPA believes that some test systems, e.g. aquatic, are unique, and for the sake of clarity, they require special treatment in the regulations.

iii. *Comment:* Field studies should be exempted because isolation is not possible in these types of studies.

Response: EPA disagrees and believes that inclusion of field studies poses no unusual burden, since the separation is only required to be "as needed" to ensure "proper separation." If the procedures used are justifiable based on experimental design and documented, then this requirement is met. "Proper separation" in a field study may mean simply that only one crop is planted in the same subplot.

iv. *Comment:* The change in § 160.43(c) is appropriate but the current wording does not require separate disease handling facilities in every case. The proposed change has merit in clarifying the options available to laboratories and the change promotes harmony between EPA and FDA GLP regulations.

Response: EPA agrees with the comment. In § 160.43(c), EPA is deleting the requirement that separate areas be provided in all cases for the diagnosis, treatment, and control of test system diseases. Instead, a change is made so that separate areas are provided "as appropriate." This change is consistent with the September 4, 1987, revised FDA GLP regulations and the revised TSCA GLP regulations.

EPA has made this change to allow laboratories the option of disposing of diseased test systems without also bearing the expense of maintaining separate areas in testing facilities for diagnosis, treatment, and control of disease. Additionally, EPA recognizes that the diagnosis and treatment requirements of § 160.43(c) may not be appropriate when dealing with such test systems as soil, plants, or microorganisms. However, if the decision is made not to dispose of the test system, test system care facilities, as specified in § 160.43(c), must be provided.

3. *Test system supply facilities*—i. *Comment:* The first sentence in § 160.45(a) should be changed so that plants and plant materials are covered in this section.

Response: EPA believes that since plants and plant materials are covered in § 160.45(b), including them in § 160.45(a) is unnecessary.

ii. *Comment:* Change § 160.45(b) by deleting it or expanding it to include tests not confined to the indoor laboratory or greenhouse.

Response: EPA agrees with the comment and is expanding the wording of § 160.45 to emphasize that this section is not intended to be confining. Therefore, § 160.45(a) is changed to read "* * * areas where the test systems are located * * *," and § 160.45(b) is changed to read "* * * (including but not limited to fields, greenhouses, * * *)."

iii. *Comment:* The addition of the two new paragraphs outlining plant and aquatic facilities to § 160.45(b) is unnecessary. These considerations are addressed in § 160.41 with the requirement that testing facilities be of suitable construction "to facilitate proper conduct of studies."

Response: EPA maintains that testing facilities as mentioned in § 160.41 and test system supply facilities as mentioned in § 160.45, are not the same and must be addressed separately.

iv. *Comment:* EPA should delete § 160.45(b) introductory text, (b)(1), (b)(2), and (c) because this information was adequately covered in § 160.45(a) and in § 160.43, and the facilities they refer to will be addressed in study protocol.

Response: EPA maintains that § 160.43 (test system care) is different from § 160.45 (test system supply facilities) and must therefore be treated separately.

4. *Facilities for handling test, control, and reference substances*—i. *Comment:* These requirements would severely restrict the ability of efficacy investigators to test their product, since § 160.47 would require separation of facilities for test animals and testing material. The real issue for efficacy testing is test substance accountability, which should be a vital part of the efficacy testing protocol, and appropriate records maintained to verify test substance accountability.

Response: EPA notes that similar concerns were raised by commenters regarding the 1983 rule. The wording "as necessary" was included then to allow latitude in facility design and operation.

EPA agrees that other measures, i.e. protocol, SOPs, and appropriate records, must be adequate to demonstrate the integrity of test, control, and reference substances during handling.

ii. *Comment:* Would it be necessary to provide separate sink facilities or separate rooms for mixing of the test, control, and reference substances or for adding water to tank sprayers?

Response: Separate areas are required for receipt, mixing and storage of test, control, and reference substances and their mixtures as necessary to prevent contamination or mixups. The same sink could be used for all work involving mixing provided that the procedures (SOPs) used are adequate to prevent contamination and mixups. Separate areas for receipt and storage and for mixing and storage of test, control, and reference substances as required in § 160.47(a)(1), (2), and (3) does not mandate the use of separate rooms. The areas could be in the same room provided there is adequate space and equipment to provide that contamination and mixup do not occur. This determination should be made on a case-by-case basis.

D. Equipment

Maintenance and calibration of equipment—i. *Comment:* The entire section, § 160.63(b), requires unnecessary documentation and/or is vague about what is required, especially for field portions of residue studies. Equipment used in these studies may only be used on an occasional basis, and routine inspection should only be "before use." Requiring calibration and maintenance logs for all equipment involved in generating a residue sample would be prohibitive, would often be forgotten or overlooked and would then be a cause for not meeting audits.

Response: The requirement states that equipment shall be "adequately inspected, cleaned and maintained" and "adequately tested, calibrated and/or standardized." This requirement is not changed from the old rule. The laboratory has latitude in defining in its SOPs what is "adequate" unless given specific guidance otherwise (i.e. in test rules or testing guidelines). However, EPA recommends that calibration and maintenance records be available for all equipment used in field studies. This includes equipment used only rarely and rental equipment.

ii. *Comment:* It is better to designate in § 160.63(b) that repair and maintenance will be performed by "qualified personnel," than to require that a person be designated in the written SOP. The requirement for written SOPs in § 160.63(b) causes problems since at many laboratories the equipment used in conducting a study is shared by a number of individuals and the care and maintenance of the equipment is also shared. In the event of equipment failure, a number of laboratory personnel may be capable of repairing or correcting a problem, or in more serious equipment failures, a service representative of the manufacturer may be called. It is therefore difficult and very inefficient to designate specific people to perform each specific maintenance and repair operation.

Response: The definition of "person" as it appears in § 160.3(h) is not limited to an individual scientist or technician, but includes an organizational subunit. Consequently, the SOP that designates the "person responsible" will be designating a subunit of the testing facility, which could be one or several individuals. This view is consistent with FDA's (52 FR 33774) interpretation and definition of "person." Where duties are delegated in the SOPs, all contingencies may be addressed, including the contracting of service personnel.

iii. *Comment:* Certain pieces of equipment, such as tractors, land preparation and land measuring devices should be exempt from the calibration requirement, as should standard commercially available laboratory ware, such as graduated cylinders, beakers, flasks, etc. Only equipment directly related to application of the test substance, such as sprayers or granular applicators should be listed as requiring calibration. Therefore, § 160.63(c) is not appropriate for field studies.

Response: EPA believes that calibration should be required for the application phase of field studies. However, the method of calibration, and hence the exact equipment to be calibrated, are not specified in GLP standards, as long as the methods and records ensure the quality and integrity of the study. Some equipment, such as graduated cylinders and volumetric flasks are pre-calibrated and do not need to be recalibrated. Equipment directly related to the application of the test substance may require calibration, but application rates may include other parameters. The methods used to measure all parameters inherent in the determination of application rates would have to be adequately calibrated in order to ensure the quality and integrity of the study.

E. Testing Facilities Operation

1. *Standard operating procedures*—i. *Comment:* There are few standardized tests available to researchers related to novel microbial pesticides. An experimental use permit is required for the evaluation of certain microbials at an earlier stage of research than is required for chemical evaluations. Therefore, it would be very cumbersome to require written SOPs for microbial pesticides, since the methodology may be in a state of flux. It may only be possible to develop SOPs following the completion of a study. If methods of application and assessment need to be modified for each microbial developed, it would be best to affirm that methods development could be performed in accordance with accepted scientific standards without having SOPs as described in § 160.81. EPA is encouraged to take a flexible, case-by-case approach to establishing appropriate GLP standards for a given set of experiments concerning development of microbial pesticides. Allowances could be made for situations in which SOPs are inappropriate, such as in the early stages of field work. These allowances, made in advance of the work, could then be positively affirmed as good laboratory practice, rather than as tolerated, non-compliance with GLP standards. This would alleviate the uncertainty of performing experiments in a scientifically sound fashion, without knowing until the conclusion of the work whether the data would be acceptable to EPA.

Response: EPA agrees that there are special problems associated with the early stage of method development. Method development phases of an experiment are not under GLP standards as has been clarified in the definition of "study" in § 160.3. SOPs are thus required for those operations in which all steps have been worked out. However, SOPs are needed to ensure the quality and integrity of all studies performed under GLP standards, for instance, after the method has been developed. There is flexibility in relation to SOPs insofar as changes can occur during the study as long as they are authorized by the study director (and management, if the changes are significant) and documented with raw data. Furthermore, methodology that is not generalized or established sufficiently to be included in SOPs can be defined in the study protocol.

ii. *Comment:* Although unchanged from the old rule, the second half of § 160.81(a) should not apply in some cases. The justification for this is as follows: (a) Unforeseen circumstances cannot be authorized; (b) minor deviations do not need authorization by the study director; (c) people who conduct the studies are required to be appropriately trained and are able to

make decisions if necessary to deviate from the SOPs; (d) in field studies, deviations from SOPs will occur before the researcher is able to consult with the study director; (e) decisions about deviations from SOPs that are made by field personnel would be based on standard agricultural practices.

Response: EPA disagrees with the suggestion that some deviations do not require authorization by the study director. It is necessary for the study director to authorize deviations from SOPs to ensure that these deviations do not have an adverse impact on the study. SOPs should be written with sufficient flexibility to accommodate field studies by anticipating conditions under which appropriate actions must be taken without the need for authorization by the study director. Standard agricultural practices can be referenced in SOPs as long as this does not lead to ambiguity concerning the appropriate action to be taken in a given situation. If SOPs state the constraints on action and a decision is made within these limits, there is no deviation. This is in concert with FDA's GLP regulations (52 FR 33774) which require that the study director make certain that specified procedures are followed and that all modifications to the procedures in the approved study plan are documented and approved.

iii. *Comment:* Some of the examples of required SOPs provided in § 160.81(b) are not applicable to all test systems or study types. For example, "test room preparation" would not be appropriate when conducting field residue studies, and "necropsy of test system or post-mortem examination of test systems," would not apply to studies using a chemical or physical matrix as the test system (sterile water, soil, agricultural fields). Furthermore, § 160.81(c) states that, "Each laboratory or other study area shall have immediately available manuals and SOPs relative to the laboratory or field procedures being performed."

Response: EPA agrees that the term "room" in § 160.81(b)(1) is inappropriate to many studies and is changing the word to "area" in order to clarify that field studies are included. EPA believes that § l60.81(b) should apply in all cases since the purpose of SOPs is to insure the quality and integrity of the data generated in the course of a study as stated in § 160.81(a). However, procedures that are not necessary to be performed, such as necropsy in the case of field studies, do not require SOPs.

iv. *Comment:* The term "test systems" should not replace "animals" in § 160.81(b) (6) and (7). Although this requirement is useful for preventing or slowing autolysis for toxicology studies, for other studies, such as metabolism, addressing the handling of moribund or dead test systems is not appropriate. In these types of studies, if a test system were moribund or dead, the testing guidelines require the part of the study that was impacted to be repeated, and this requirement is only applicable to animals.

Response: EPA disagrees with the comment. This rule applies to plants as well as animals.

v. *Comment:* Published literature (e.g., ASTM methods) should be acceptable in § 160.81(c) as an appropriate part of an SOP and not just as a supplement to a written SOP. The written SOP could incorporate the published literature by reference, without having to rewrite the entire procedure.

Response: EPA agrees that it would not be appropriate to rewrite published literature, hence the allowance for SOPs to use it as supplements. The SOPs are still needed to establish the relationship of the method to data collection procedures and needs in the laboratory. While the resulting SOP would still have to be written, it would in effect be abbreviated in that all of the methodology referenced would not need to be rewritten.

2. *Animal and other test system care*—i. *Comment:* Section 160.90(a) should be deleted since the subject is covered in § 160.81(b).

Response: EPA recognizes that § 160.81(b) requires testing facilities to establish SOPs for animal or other test system care. Section 160.90(a), however, expressly specifies that SOPs shall also cover test system housing, feeding and handling. This section is consistent with FDA's GLP regulations and is not an additional requirement.

ii. *Comment:* Section 160.90(b) should be simplified to provide that test systems be evaluated prior to use but not necessarily isolated. For some studies, such as plant metabolism, isolating the plants or soil is not appropriate.

Response: EPA disagrees. Isolation is necessary to insure that a test system is free from disease or other conditions that may impact the study. Further, the inclusion of this is consistent with FDA's GLP regulations.

iii. *Comment:* The evaluation of certain test systems according to "acceptable * * * scientific practice" creates some difficulty, particularly for plants, microorganisms, soil and water, since such practices are not defined. "Acceptable" should be deleted regarding scientific practice and the requirement be only that a scientific basis be used in determining appropriateness for testing. In this way, testing facilities would not need to justify or prove their basis to be "acceptable" in ill-defined areas or those in flux.

Response: EPA agrees that the term "acceptable scientific practice" may not be definable when method developments are in flux. The term "acceptable" is retained, but the term "scientific practice" is changed to "scientific methods." This change preserves EPA's intent that rigorous scientific methodology be used without implying that rigid practices be adhered to where they may not appropriately exist.

iv. *Comment:* The requirement under § 160.90(c) that the test area be disease-free prior to study initiation is inappropriate for field studies since it would be impossible to declare areas totally disease free under field conditions. Also, one of the objectives of performing studies in the field is to conduct the studies under representative environmental conditions which includes encountered disease and insect pressures, making this part in direct conflict with the study objective.

Response: The requirement is for the test system to be "free of disease or condition that interfere with the purpose or conduct of the study." The current wording therefore provides sufficient latitude for field studies. Furthermore, EPA does not intend compliance with this provision to require deviation from accepted agricultural practices. If disease and insect pressures are considered to be an integral part of a study, they clearly do not interfere with the purpose and conduct of that study. The test system would therefore not need to be free of them.

v. *Comment:* Section 160.90(c) should be deleted since the effect of corrective treatment cannot be accounted for in test results.

Response: EPA believes that while the effects of corrective actions taken to isolate and treat disease or signs of disease may complicate interpretation of test results, so might the effects of the disease itself. This requirement for field studies is not inconsistent with its inclusion for laboratory, i.e., toxicology, studies.

vi. *Comment:* Markings which identify animals individually, rather than the group as required by § 160.90(d), are needed in many studies with warm-blooded vertebrates in pens, or in the field. For example, precocial young of avian species should be marked individually.

Response: Specific criteria for marking of individuals to meet study

requirements should be addressed separately in the protocol of the study. The requirement in § 160.90(d) addresses the need that test systems be adequately identified to prevent confounding with other test systems. Identification of precocial birds, for example, may be outlined in the study protocol.

vii. *Comment:* The proposed multispecies housing under § 160.90(e)(1) is redundant to proposed § 160.43(a)(1) and is inconsistent with EPA's desire to streamline GLP standards.

Response: EPA disagrees with the conclusion that these sections are redundant. While § 160.43(a)(1) states that the facilities shall be sufficient to allow proper separation of species, § 160.90(e)(1) refers specifically to test system care within the facilities.

viii. *Comment:* Field studies should be exempt from the periodic testing requirement of § 160.90(g). A bioassay or chemical analysis prior to study initiation should suffice to show that contaminants are not present at levels capable of interfering with the study. The need for prior analysis may even be obviated by documentation of the previous history of pesticide use in the soil according to Standard Evaluation Procedures to ensure that no interfering contaminants are present.

Response: The regulations as written do not require that periodic tests be performed during a study unless there are "contaminants known to be capable of interfering with the study and reasonably expected to be present at levels above those specified in the protocol." If there is no reasonable expectation that a problem exists, periodic testing is not needed. An acceptable method to determine this, such as evaluation of the history of pesticide use, should be defined in the protocol or SOPs.

ix. *Comment:* The requirement in § 160.90(j) for acclimatization of plants and animals should be deleted, since it is not defined and promotes confusion. Animal toxicology tests would be subject to isolation and separately to acclimatization. Organisms in environmental studies will have been isolated with their health status being evaluated per § 160.90(b) and acclimatization would have already been performed as part of the process. This part should be amended to indicate that test organisms be acclimatized to all experimental conditions except the test substance.

Response: EPA believes that the term acclimatization has common meaning that is clear in the context of its usage in the regulation. Acclimatization implies accustoming to experimental, i.e., environmental, conditions other than the actual introduction of the effect (e.g., test substance) to be measured in the experiment. If acclimatization is achieved during the process of isolation, it should be so stated in the protocol and does not require additional technical effort.

In addition, the term "organisms" in § 160.90(j) has been changed to "systems." This change is consistent with the intended expansion of GLP standards and was an inadvertent omission in the proposed rule.

F. Test and Control Substances

1. *Test, control, and reference substance characterization*—i. *Comment:* Requiring stability and solubility before testing would result in a costly burden to the efficacy testing sponsor. The solubility testing portion of this requirement would not cause significant problems, but requiring stability testing to be completed before study initiation could result in significant time and cost burdens.

Response: It is more costly to have to repeat a study because of inadequate solubility or stability in respect to experimental needs. EPA agrees, however, that requiring stability testing to be completed before the study may result in unnecessary delays and is allowing concurrent stability testing. Therefore, EPA has changed the requirement to allow stability testing concurrently with the study. Solubility, where this is relevant to a study, must still be known before the experimental start date. Please note that the 1983 GLP standards require determination of characteristics which will appropriately define the test or control article before study initiation. Thus solubility determination before a study, where it is relevant to the study and hence an appropriate characteristic, is not a new requirement.

ii. *Comment:* The term "purity" should be expanded to include radiochemical purity since further definition is needed to encompass metabolism/environmental fate studies conducted with radioactive materials.

Response: Radiochemical purity is covered under "other characteristics which appropriately define the test, control, or reference substance." It is not necessary to specifically list this characteristic.

iii. *Comment:* What level of analysis constitutes "appropriate" characterization? Is quality control batch analysis sufficient? Is it necessary to fully characterize technical materials to 0.1 percent?

Response: The details of what "appropriately" defines the test substance is a guideline or protocol issue that cannot be specified in a generic document such as GLP standards. The appropriate level of characterization is largely dependent on the nature of the study that the substance is to be used for.

iv. *Comment:* What needs to be characterized, the technical grade active ingredient or the end product?

Response: The test substance needs to be characterized. If the test substance is the end product, the end product needs to be characterized.

v. *Comment:* The characterization requirement is inappropriate since it conflicts with management responsibilities, is costly, and adds unnecessary delays to the development process. It removes a necessary option of planning by objectives that responsible business management must retain. Delays and rescheduling, which may result if inadequate work is permitted by management, are real consequences that must be accepted by management, and management must decide whether or not to risk beginning an experiment prior to doing characterization studies. Since the ultimate validity of a study will require that such data be obtained before the study is completed and as long as the sponsor can demonstrate that a study was conducted with authentic material, it is irrelevant when the characterization is completed. This proposal is not in concert with FDA GLP regulations. Many times prospective products fail to reach the marketplace due to unusual or insurmountable problems. Therefore, eliminating the need for characterization of product will reduce the costs of products that fall out of developmental process.

Response: Characterization is necessary to ensure integrity of studies. It is also necessary for EPA to have characterization data available for inspectional purposes during ongoing studies, and thus to have this information complete at the beginning of the study. Without characterization, it is not possible to know whether test, control, or reference substances from different batches that are used in a single study are in fact identical. Adequate testing for characterization normally occurs during the synthesis or production of test, control, and reference substances, and thus should already be available before the test begins. Consequently, having characterization data available should not impose an additional burden in most cases.

EPA does agree, however, that stability testing should be allowed to be performed concurrently, to prevent unreasonable delays. The sponsor will bear the burden of a repeated test in the case that concurrent stability testing suggests that the study is not valid. For that reason, EPA is revising § 160.105(b) to allow for concomitant determination of stability.

vi. *Comment:* The last sentence of § 160.105(a), relating to methods and fabrication, should be deleted since these may contain CBI.

Response: This is not a new requirement and has not posed any problems. Inspectors are cleared to handle CBI material; any sensitive information can be declared CBI and treated as such.

vii. *Comment:* Some EPA auditors are interpreting this section to require that the testing facility not only archive certification records concerning the purity or assay of an analytical standard (reference substance), but to also archive copies of the raw data and records generated during the certification process. The sponsor or chemical supplier should only be required to archive the raw data supporting the certification of an analytical standard. The testing facility need only archive a copy of the certification of the standard.

Response: EPA agrees with the comment, and is modifying § 160.105(a) to allow for specification of the availability of the documentation supporting the characterization if it is not available at the testing facility. The phrase "and such documentation availability shall be specified" is added to the end of the first sentence in § 160.105(a), following the word "* * * experiment."

viii. *Comment:* Many of the tests coming under the scope of the proposed GLP standards are in themselves stability studies. Soil dissipation tests are stability determinations of herbicides, as are tests of microbial genetic markers for measuring persistence of recombinantly derived organisms. The proposal places industry in the quandary of conducting stability studies prior to a stability study.

Response: The performance tests cited cannot be considered to be stability tests under the GLP standards. In the context described above, the persistence of the substance in the environment is a separately measured parameter. However, when performing such tests, it is still important to know the stability of the substance to ensure that the measured effect was due to the effect of the test system.

ix. *Comment:* Would it be acceptable to EPA if the stability knowledge is based on the extrapolation of the results of a short-term stability study under extreme conditions carried out before the experimental starting date?

Response: Such an accelerated study would not demonstrate stability under test conditions, and could not be part of the concurrent stability testing performed in conjunction with a larger study. It would be a separate study with its own protocol.

x. *Comment:* The proposed rule does not address whether quality control activities fall under the GLP standards.

Response: Not all quality control activities are GLP issues. Quality control work that is integral to the laboratory performing the study would be under GLP standards, but not that performed during manufacturing. Studies as defined in this part are subject to GLP standards only when required to be submitted to fulfill data requirements.

xi. *Comment:* The part related to "storage container assignment for the duration of a study" in § 160.105(c) would be unrealistic for field studies, especially where storage containers may be large tanks, or delivery systems which are possibly not even owned by the sponsor or testing facility.

Response: The delivery systems and tanks that are part of delivery systems are not "storage containers." Test, control, and reference substance will, however, be stored before use in some container that is unique to that substance during the test. This may be the container that it comes in or that is assigned to it by the testing facility.

xii. *Comment:* Liquids from large containers are often placed into smaller containers for use during the study. Consolidation of the test substance into smaller containers as the supply is depleted should be allowed. These containers need not be retained after they are empty, since their retention does not enhance the quality or integrity of the data collected.

Response: EPA disagrees with the suggestion. The retention of containers is necessary to ensure the integrity of the study. This includes empty containers, which must be kept to verify the disposition of the test, control, and reference substance. Disposal of containers adversely affects accountability. This provision of the rule is not changed from the 1983 rule, but was commented on by the public because it may affect types of studies, such as field studies, that will now fall under the provisions of the rule as a result of these amendments.

xiii. *Comment:* How are "studies of more than 4 weeks duration" specified in § 160.105(d) defined? They should be defined as studies having an "in-life phase" of more than 4 weeks.

Response: The term "4 weeks duration" is meant to apply to the experimental start and experimental termination dates. The suggestion of using the term "in-life phase" is not accepted since this introduces new terminology that is not adequately defined. The term "4 weeks experimental duration" replaces "4 weeks duration" in § 160.105(d) to clarify that the study initiation and study completion dates are not implied.

xiv. *Comment:* Section 160.105 (b) and (e) do not provide necessary discretion to testing personnel to determine what data are needed to characterize stability for a substance, and how the determination is made. The phrase "under test conditions" needs additional clarification, since a variety of temperature, humidity, moisture, and other test conditions may be encountered across the United States. Routine product chemistry testing for emulsion stability, hydrolysis, photostability, etc., should satisfy this requirement.

Response: The terminology "under test conditions" is ambiguous and may be misinterpreted, so EPA has decided to delete "under test conditions" from § 160.105(e) and replace it with "under storage conditions at the test site." This may be adequately addressed by routine product chemistry testing as long as storage of the substance at the test site is in known, acceptable conditions.

xv. *Comment:* Section 160.105(e) should be deleted since it was redundant with § 160.113(a)(2).

Response: EPA disagrees that these sections are redundant. Section 160.105(e) refers to the test, control, and reference substance, while § 160.113 refers to mixtures.

xvi. *Comment:* Knowledge of stability makes sense for long-term, but not short term studies because if stability is suspect then doses are made up each day and given or sprayed immediately. Adequate knowledge of stability may exist from chemical information about the test substance.

Response: If a substance is known to be stable for a few days, then its stability is known in terms of the test requirements. If the stability is not known, it must be determined, even for short-term studies. Storage stability needs to be known even if the material is used "immediately". If enough information is known about the material to support its stability from other testing, its stability is known and the requirement is met. However,

theoretical stability is not considered to be adequate. The method used to compensate for poor stability, such as daily mixing or immediate application, is addressed in guidelines rather than in GLP standards.

2. *Test, control, and reference substance handling—Comment:* If the test, control, or reference substance is inherently unstable, it may not be possible to "preclude deterioration." Therefore, the regulation should allow for periodic evaluation of the purity of the test substance during a study to assure its integrity and replace it when shown to be warranted.

Response: The intent is to prevent deterioration due to handling. Periodic testing is allowed under § 160.105(b) as changed in the final rule.

3. *Mixtures of substances with carriers—*i. *Comment:* Does § 160.113 require determination of uniformity, stability, and solubility during field residue studies? If so, does it require analyses for each tank preparation? This requirement would impose a large burden on testing facilities performing these types of studies.

Response: The purpose of this section is to assure that the methodology used to prepare the mixture is valid. Once the methodology has been proven for a particular mixture, it need not be reconfirmed each time that mixture is prepared. For field residue trials, there will be data submitted to EPA that support the uniformity, stability, and solubility of a substance in the carrier when prepared by appropriate methodology, i.e. according to the proposed use or label. In such cases it may not be necessary to test each batch that is prepared for field application. However, field residue trials do remain subject to the requirements of this section. Where available data are inadequate to support uniformity, stability, and solubility in a particular case, then it is necessary for the data to be generated under this section. Also, there may be protocol stipulations applicable to a particular study that require tank mixture analyses in addition to any provisions of this section.

ii. *Comment:* The range of environmental conditions encountered in field trials are great and would require extensive evaluations of stability and solubility under numerous environmental conditions. This amount of data could not be evaluated prior to study initiation.

Response: Section 160.113(a)(2) states that the determination(s) shall be "* * * under the environmental conditions specified in the protocol and as required by the conditions of the test." All possible environmental conditions do not have to be anticipated and tested unless required in the protocol.

iii. *Comment:* Short-term toxicity and field residue studies should be exempted from this section since supplementary analyses are performed for other studies with the same test substance. The analytical cost could equal or exceed the cost of the remainder of the short-term study.

Response: The GLP standards do not require characterization for each study. The characterization is required for each test, control, and reference substance. The same substance may need to be characterized only once, even if used on multiple studies.

iv. *Comment:* The requirement for stability and solubility should allow flexibility for the sponsor to make the determination either before, during, or after the study. When to determine the stability is a business decision based on knowledge of the risk of having to repeat a study, if the stability data negatively impacts the integrity of the study.

Response: EPA understands that requiring stability testing to be completed prior to a study may introduce unreasonable delays. In harmony with the modification of § 160.105(b) to allow concurrent stability testing of test, control, and reference substances, § 160.113(a)(2) is changed to allow stability testing of mixtures to be performed concomitantly with the study. This allows the necessary flexibility and is also consistent with FDA's GLP regulations.

v. *Comment:* In the very early stages of a compound's development there is a need for basic acute toxicity tests. However, there are no analytical methods and calibrated reference standards available to test the stability of the test substances in the carrier according to GLP standards. An estimate of the stability of the compound in an inert carrier like starch, oil, or polyethylene glycol is possible and should be sufficient as a preliminary approach. The stability test will be carried out as early as the analytical methods are available.

Response: If a carrier is used, the mixture with the carrier must go through the same test, i.e. stability, solubility, etc. Instability of the mixture in a specific carrier is important since it may affect the apparent effects of the test substance.

vi. *Comment:* The assurances called for in § 160.113(c) are not well defined. How would the addition of the vehicle used to facilitate mixing of the test substance with the carrier to the control system affect this requirement? If the vehicle is identically mixed in control, is there a need to show noninterference?

Response: Any vehicle used to facilitate mixing must be shown not to interfere with the study. This includes a vehicle control to determine interaction effect.

vii. *Comment:* If a test substance is applied to a soil, is the soil a carrier or test system?

Response: This section does not generally consider "soil" to be a carrier; it is considered to be part of the test system.

G. Protocol for and Conduct of a Study

1. *Protocol—General—*i. *Comment:* The proposed regulations do not offer sufficient latitude for the generation of protocols. The regulations state that a protocol must exist prior to study conduct, yet it would be almost impossible to specify the exact analyses that would be performed on biological samples collected in the field until the samples were collected.

Response: The protocol requirement is not too restrictive to allow for situations where the exact analysis performed may not be known in advance. The type or nature of analysis still needs to be specified in the protocol. The protocol should state what samples are intended to be collected, how they are to be collected, and how they are intended to be analyzed. If there is a need for latitude, (for instance it is not known specifically how many samples will result from a particular study) that should be anticipated and stated in the protocol.

ii. *Comment:* Section 160.120(a)(5), (7), (10), and (11) should not apply to product chemistry experiments.

Response: The term "test system" is redefined to include any physical matrix, which may thus be applicable to product chemistry studies. However, note that a study designed solely for the determination of certain chemical or physical characteristics of a test substance are exempted from § 160.120(a) (5), (7), (10), and (11) as described in § 160.135.

In addition, the word "of" prior to "frequency" should be "and." This was a typographical error noticed by one commenter and has been corrected in this final rule.

iii. *Comment:* Guidance is needed in the final preamble for presenting addresses, as required by § 160.120(a)(3), of field and environmental locations used to conduct tests.

Response: The address of the testing facility is the address of the "person" (i.e. organizational unit or subunit) who

actually conducts the study. Even if this organizational unit includes parts situated in different locations it may still be considered to have one address. The address should be a permanent address and would probably be synonymous with the address of the study director and/or testing facility's management.

iv. *Comment:* "Address of sponsor" should be removed from this Part to maintain consistency with FDA GLP regulations.

Response: EPA maintains that the address of the sponsor is essential to its inspectional process, which differs from that of FDA.

v. *Comment:* The requirement in § 160.120(a)(4) to state proposed experimental start and termination dates poses problems for field studies where these dates cannot be predicted with certainty. Would this result in protocol deviations whenever these dates are not exactly met?

Response: The requirement to document the proposed experimental start and termination dates in the protocol does not suggest that a protocol deviation occurs when the date is not met. The term "proposed" signifies that this date is estimated. However, gross deviation from the proposed date may be a violation of the protocol, if there are date-critical aspects of the study that are identified as such.

vi. *Comment:* Section 160.120(a)(5) is inappropriate because: (a) Justification should be required only when more than one test system can be used in a study and not, for example, in residue chemistry studies where residue levels in specific target crops are the subject of a study; (b) Justification should only be required for those that deviate from, or fall outside the normal EPA guidelines and not where standard test systems (Pesticide Assessment Guidelines and Standard Evaluation Procedures) are used; (c) The retention of this requirement does not promote harmony between the EPA and FDA GLP regulations.

Response: Environmental studies are more diverse than health effects testing and are subject to details relevant to test system design that are more chemically dependent than is the case in health effects studies. Furthermore, this is not seen to impose a burden in the cases described in this comment. In the case where only one test system can be used, that is the justification that should be stated. The targeting of a specific crop may be part of the justification and so stated; it is still necessary to state that the test system (e.g., strain of crop, soil, location) used is justified for the purpose of the study. If a standard test system is used because it is the referenced system in EPA or Organization for Economic Cooperation and Development (OECD) guidelines, citing the use of such guidelines is sufficient justification. Thus, detailed discussions are required only in the relatively few cases where the study design requires deviation or special choices to be made in selection of the test system.

vii. *Comment:* EPA should add "range" to § 160.120(a)(6) so it reads "* * * body weight range," since without specifying range, the protocol requirement could be misinterpreted to mean that all individual body weights of the test system should be included. This would not be possible since exact weights of test systems would not be known when the protocol is prepared.

Response: EPA did not intend a change here and retains the term "body weight range" as used in the 1983 rule.

viii. *Comment:* Section 160.120(a)(7) should be deleted since the test system will be identified and justification for its selection will be in the protocol.

Response: Identification of the test system is not covered in any of the other parts of § 160.120. Identification is the specific description of which individual test system is used, not a general description of the kind of test system.

ix. *Comment:* The method for controlling bias is usually in the SOP, therefore inclusion of a reference in the protocol to the SOP should suffice.

Response: EPA agrees that this is allowed. The SOP may be referred to in the protocol in such cases.

x. *Comment:* The term "nutrients" should be added to the list for the description of the diet used in the study to cover the use of fertilizer in plant studies.

Response: EPA has incorporated this suggestion into the final rule.

xi. *Comment:* Section 160.120(a)(10) should be deleted, or amended with "if appropriate" because: (a) The reason for selecting the route of administration is the objective of the study; (b) route of administration and reason for its choice is not applicable to studies such as aqueous hydrolysis and anaerobic aquatic; (c) EPA Pesticide Assessment Guidelines require the use of certain routes.

Response: Unlike FDA, EPA requires many tests where a predefined route of exposure is not available. Multiple exposure routes may be possible for many test substances. It is appropriate to state that the route is mandated by guidelines or by the purpose of the study if either of these are the case.

xii. *Comment:* Section 160.120(a)(10) should be modified to read "* * * route of administration and/or exposure * * *" to encompass other types of protocols.

Response: EPA disagrees with the suggestion since the experimenter controls administration but does not have control of the route of exposure. Administration routes cover the potential of all exposure routes and hence is a more general, all-inclusive term in this case.

xiii. *Comment:* Section 160.120(a) should be reworded so that it reads: "The route or method of administration/application and the reason for choice, if appropriate."

Response: EPA disagrees with the suggestion. The route of administration is not the same concept as method of application or administration. It would not be appropriate to introduce statements concerning methodology to this section.

xiv. *Comment:* In the case where the study director is part of a contract laboratory engaged for the study by the sponsor, it should be clarified that such signature as required under § 160.120(a)(14) does not constitute review and approval of those parts of the protocol not related to the work done by the contract lab. For example, the study director for the chemical analysis of pesticide residues in plants may not be trained in the experimental design of the sponsor's overall study, although he or she may be qualified to conduct the subpart of the study contracted to the laboratory. Such a dilemma may similarly arise in § 160.120(a)(5), (7), (10), and (15).

Response: EPA believes that the study director cannot, by definition, be an individual who is not trained or cognizant of the overall study. A study is not subdivided into multiple studies with multiple study directors. The definitions of "study" and "study director" preclude such a separation of responsibility.

xv. *Comment:* "Where applicable" should be added to § 160.120(a)(15) since statistical methods are not used in field studies.

Response: Statistical methods are and should be used in field studies. However, where the use of statistics is limited this can be so stated.

The phrase "to be used" should modify the term "statistical method" as in § 160.120(a)(16) of the 1983 rule. This was a typographical error noted by one commenter and has been corrected.

xvi. *Comment:* Section 160.120(a)(15) is redundant since all of § 160.185(a)(3) requires statistical methods employed for analyzing the data.

Response: Section 160.185 describes reporting requirements after the study,

while § 160.120 describes protocol requirements before the study.

2. *Physical and chemical characterization studies*— i. *Comment:* Section 160.135 is confusing and needs to be read several times in order to understand it. EPA should clarify its intent by specifying those studies to be conducted under GLP standards, and by removing the double negatives currently presented in § 160.135(a) and (b).

Response: EPA agrees with the comment. The section is changed to eliminate the double negative and reworded for clarity while retaining the intent of the proposed changes.

ii. *Comment:* Should exemptions also apply to "assembly line" biological studies, such as the Ames test, acute lethality, eye irritation, etc?

Response: EPA does not intend to expand exemptions to biological tests previously covered by GLP standards, even when repetitive in nature. Section 160.135 applies only to physical and chemical characterization studies and is intended to ease the burden on many studies that will now come under GLP standards.

iii. *Comment:* The concept of what constitutes a study is blurred by this section. Partial deletion of protocol requirements implies that a protocol is still required for these "exempted measurements."

Response: EPA intends that a protocol still be required for the partially exempted studies. Some, but not all, of the full protocol requirements are eliminated.

iv. *Comment:* Areas for receipt and storage of test substances have been deleted in § 160.47(a)(1), but corresponding SOPs are still required by § 160.81(b)(3).

Response: EPA maintains that SOPs for test, control and reference substance handling are still important, if not more important, when facilities for their handling are not specified.

v. *Comment:* Stability is to be known under conditions of the test under § 160.105(e), but the requirement to report that information is deleted in § 160.185(a)(5)) and the requirement to determine stability is removed by deleting § 160.105(b).

Response: EPA agrees, but there is no contradiction. The requirements for determination and reporting of stability are relaxed although stability still needs to be known.

vi. *Comment:* A protocol is required even though certain specific elements have been deleted (§ 160.120(a)(5) through (12) and (15)), but the requirement for the quality assurance unit to retain the protocol is deleted (§ 160.195(d)).

Response: EPA agrees that this is true. The QAU recordkeeping requirements are relaxed although the protocol still needs to be written.

vii. *Comment:* A quality assurance unit is required by § 160.35(a), but by deleting § 160.31(c) management will not have to assure the existence of a QAU.

Response: EPA eliminated § 160.31(c) because it requires management to "assure that there is a quality assurance unit as described in § 160.35." This would have contradicted the exclusion of certain portions of § 160.35 as specified (i.e. § 160.35(b) and (c)). That which is not excluded under § 160.35 must comply with § 160.35(a).

viii. *Comment:* A study director is required according to §§ 160.12 and 160.33, but does not have to be shown in the final report by the deletion of § 160.185(a)(10).

Response: The study director is still required to sign the compliance statement submitted with the final report as required in § 160.12 and is thus required to be named in the final report. A number of individuals are listed in § 160.185(a)(10) in addition to the study director. This section was exempted to reduce reporting requirements.

ix. *Comment:* Studies designed to determine stability, octanol water partition coefficient, volatility, and environmental persistence (biodegradation, photodegradation, or chemical degradation studies) should exclude § 160.43(a)(1) through (c) and (f) through (h), 160.45, 160.81(b)(1), (2), (6), (7), and (9), and 160.90. Only the physical and chemical properties that are used to predict the environmental fate of a test substance should be developed in compliance with these regulations. Those properties which are not clearly used for this purpose should be excluded.

Response: EPA does not agree that the listed sections are irrelevant in their entirety to the listed studies. Those portions of the sections which are plainly not applicable to these studies (e.g. animal care facilities) do not place any burden on these studies.

x. *Comment:* The removal of physical and chemical characterization from the responsibilities of the QAU should not be accepted because it presents a major problem for the QAU personnel. The QAU should be responsible for every study within the laboratory with no exception.

Response: EPA disagrees with the conclusion that the QAU has no responsibilities in physical and chemical characterization studies. The exclusions reduce the responsibilities of the QAU, i.e. master schedule requirements, etc., but do not eliminate them.

xi. *Comment:* The QAU should be responsible for looking at the functional components of the laboratory (e.g., all melting points, all GC/MS analyses, etc.) rather than focusing on a particular study, such as with toxicology studies.

Response: EPA agrees and is modifying the inspectional requirements of the QAU under § 160.35. This change specifies that the QAU conduct inspections and maintain records that are appropriate to particular studies. This gives latitude to the QAU with respect to how the information is gathered; i.e., as part of the standard review procedures of the laboratory, or as needed for the test. This change should reduce the burden in cases where it is appropriate to maintain central records regarding functional components that affect several studies rather than requiring such records to be maintained separately.

xii. *Comment:* If physical and chemical characteristics are to be covered by GLP standards, they should not be referred to as separate "characterization studies." These tests are listed in 40 CFR part 158 as physical and chemical characteristics and properties and are submitted to EPA in studies by Guideline series numbers, not necessarily as individual "characterization studies." Additionally, in product chemistry many of the characteristics listed in proposed § 160.135(b) are part of Series 63 (i.e. stability, solubility, etc.), which is submitted as a single study. If these characteristics are to be covered by GLP standards, it should only be to the extent of the data requirements in 40 CFR 158, because it is not the purpose of the GLP standards to define studies for registration.

Response: EPA disagrees with this comment. GLP standards do not expand data requirements. The regulations only specify how the data are to be generated.

xiii. *Comment:* All product chemistry should be exempted from these regulations, except for those studies specifically noted in the preamble (i.e. stability, solubility, octanol water partition coefficient, volatility and persistence), which also affect the environmental hazard assessment and/or are required by other sections of the guidelines.

Response: EPA maintains that all data that are required to be submitted to EPA be collected according to GLP standards. While EPA believes that a portion of the requirements of the previous GLP standards can be reduced for some studies, the standards are still

important to assure the quality and integrity of the data generated.

xiv. *Comment:* The series 60, 61, 62, and 63 requirements are mainly process and method development type experiments, and are developed over a period of time with portions sometimes contributed from laboratories in plant locations, making it prohibitively expensive and unrealistic to have these portions under a GLP program.

Response: While there may be additional cost, the need to have the work performed under GLP standards overrides this concern. EPA does not agree that GLP requirements in this section entail unrealistic requirements on laboratories that perform these types of experiments.

xv. *Comment:* The data quality from the series 60, 61, 62 and 63 studies would not be compromised since the companies that are generating these data are usually doing so for their own economic benefit as well as for registration purposes.

Response: Data developed under manufacturer's demands for quality control information do not reflect the same constraints upon data integrity as required by EPA. During the manufacturing process, cost and time considerations may conflict with safety assessment data quality needs.

xvi. *Comment:* EPA should revise PR Notice 86–5 to ensure that the definition of study corresponds with the definition in the GLP regulations.

Response: The GLP regulations address the integrity of data generated during a study. PR Notice 86–5 addresses the reporting of the data, which is a separate concern.

xvii. *Comment:* The term "studies" in the title of § 160.135 should be replaced with another term, such as "experiments," to avoid the misconception that these experiments must be carried out as separate "studies." As separate studies, they would require separate protocols, study directors, study reports, QAU audits, etc., when in fact these experiments are part of a larger study, which already has its own protocol covering all the various experiments to be performed. It may be that this part should be deleted because these tests do not fit the basic definition of study and should not be included, in any way, under the scope of the GLP standards.

Response: EPA disagrees that these tests are not studies. The definition of study includes the phrase "to determine or help predict [the test substance's] effect * * * and fate." Therefore the physical and chemical characterization parameters are included. EPA agrees that in some cases, the determinations will have been performed as part of a larger study (e.g. product chemistry) and consequently will have been performed under the protocol of the larger study. In other cases, however, each of these studies will require a separate protocol.

xviii. *Comment:* Are GLP requirements applicable when analyses are conducted by an outside laboratory, or are they exempted from the various sections outlined in § 160.135(a)?

Response: The location where the analyses are performed does not affect the applicability of the GLP regulations.

xix. *Comment:* Section 160.135(a) in the proposed rule should be deleted because the regulation is far too complex to start applying parts of it to one study, but not to another. It is a major task to instruct personnel on the requirements in the GLP standards; and it would be an impossible task to instruct them on multiple versions of GLP standards.

Response: There should not be many cases where the same workers will need to be trained in both levels of GLP interpretation. There are not "multiple versions" of GLP standards, only a relaxation of some requirements for some studies. EPA does not consider this to be imposing an additional burden.

xx. *Comment:* Under § 160.135(b), an unusual situation can occur with quality assurance because a QAU is required to exist by retention of § 160.35(a) and is implied to have records of inspection by retention of § 160.35(d), but has no duties by virtue of deleting § 160.35 (b) and (c). Both § 160.35 (a) and (d) should be added to the list of excluded provisions.

Response: EPA agrees that there are inconsistencies in eliminating § 160.35 (b) and (c) since there are no inspectional responsibilities included in § 160.35 (a) or (d). Consequently, EPA is expanding § 160.35(a) to include inspectional responsibilities.

xxi. *Comment:* The repetitive inspection of the types of studies required in proposed § 160.135(b) would consume large amounts of time for both study personnel and the QAU staff without contributing to the quality and integrity of the data. The periodic inspection of such operations would provide the necessary assurance that the data were of sufficient quality and integrity to meet all requirements under GLP standards.

Response: EPA disagrees with the comment and expects that each study be inspected by the QAU at least once. Where these types of tests are repetitive or routine in nature it should be possible for the QAU inspectional process to be equally routine.

xxii. *Comment:* EPA should modify proposed § 160.135(b) to make it perfectly clear that stability/solubility experiments carried out as part of a study are not excluded from the exemption provided by § 160.135(a). When the sole purpose of a study is to determine stability or solubility, GLP standards should apply, but where stability or solubility determinations are being made prior to the initiation of the actual experiment for which the study is being conducted, there is no reason to treat those determinations as a separate study. The study protocol will cover the need for, and method of, determining stability and solubility in situations where it is necessary to make those determinations in order to ensure the success of the study.

Response: EPA agrees that "sole purpose" stability/ solubility studies are under GLP standards, but disagrees that these studies should be exempt when they are part of another GLP study. If they are a part of a larger study, they are within its protocol, and hence under GLP standards. If they are not within that protocol, then they are "sole studies" under GLP standards in their own right.

H. Records and Reports

1. *Reporting of study results*—i. *Comment:* Section 160.185 delineates the information to be included in the final report. Since the Office of Pesticide Programs (OPP) has already designed Data Reporting Guidelines (DRGs) as addenda to the Pesticide Assessment Guidelines and these are being used by applicants, this section appears to be unnecessary. Furthermore, there are a few issues where the GLP standards and DRGs are not compatible and illustrate a possible conflict in EPA requirements: (a) Section 160.185(a)(2)—(protocol)—The reviewer at OPP needs to know the study objectives, not necessarily what the objectives were in the protocol and what changes were made during the course of the study; (b) Section 160.185(a)(6)—(methodology)—A description of the methods used is required, but residue chemistry reports require a separate report for methodology; (c) Section 160.185(c)—(report amendments)—Information Services Branch has specific requirements in PR Notice 86–5 regarding the submission of amended reports. In cases such as these, which document has the superseding authority?

Response: DRGs are designed for presentation of data to EPA after the performance of the study, and GLP standards are designed to ensure data

integrity during the performance of the study. GLP standards require additional information to be contained in the final report that are not required by the DRGs. This should not result in any issues of superseding authority.

ii. *Comment:* Section 160.185(a)(12) should be modified to require reports only when they are necessary to explain results that are highly subject to interpretation or critical to the final evaluation of the study. Otherwise this will result in an unusual reporting burden with little benefit during field residue studies.

Response: EPA does not agree that the requirement is impractical or unnecessary. This reporting requirement cannot be left entirely to the discretion of the study director.

iii. *Comment:* At the EPA's second data submitters' workshop on the implementation of PR Notice 86–5 on December 15, 1986, EPA handed out the "Clarification of PR Notice 86–5 Requirements" pertaining to GLP considerations. EPA states in this clarification that reformatting final study reports to comply with the submission requirements of PR Notice 86–5 does not constitute a formal "correction or addition" to a final report that would otherwise require the signature of the study director under 40 CFR 160.185(c).

Response: EPA agrees and is incorporating the suggestion in the final rule so that modification to comply with EPA submission requirements does not constitute a correction, addition, or amendment. However, EPA advises that the process of reformatting final study reports does not alleviate the study director of accountability in signing the final report or the compliance statement.

2. *Storage and retrieval of records and data*—i. *Comment:* The phrase "beyond quality assurance" in § 160.190(a) needs clarification since it could be ambiguously interpreted. Does it mean the date of the final approved report or does it mean beyond initial evaluation of the specimens, since that was the statement used in the corresponding preamble section?

Response: EPA intends that the specimens be retained until the quality assurance unit assures that their discarding does not negatively impact the integrity of the study. The wording is being changed to "after quality assurance verification" to clarify this.

ii. *Comment:* Tissues and animal feeds collected from non-toxicology studies should also be discarded after quality assurance verification. If EPA does not intend for animal tissues to be retained from residue studies, "animal" not appearing after "plants" is an oversight.

Response: EPA did not include the term "animal" in the list since it would potentially include tissues and feeds from toxicology studies which must be kept. It is felt that the suggested wording would not provide sufficient breadth to cover non-residue samples. Therefore, EPA will require that all animal tissue samples, even from non-toxicology studies, be included in this Part.

iii. *Comment:* Retention time for ^{14}C-labelled specimens needs to be addressed since a facility's license limit could be exceeded for storing radioactive material.

Response: The problem of licensing requirements is a facility responsibility under GLP standards. EPA does not agree that special consideration be given to sample storage based on the above reasoning.

iv. *Comment:* This Part does not clearly define who must archive raw data or authenticated copies. If the test facility's portion of the study is small compared to the entire project, it does not make sense to archive at the test facility. The sponsor should be required to archive all raw data in support of a submission and provide that data to the test facility in the event of an audit. Archiving at the test facility will put an undue and unnecessary hardship on small laboratory facilities. Another problem to be considered is whether the test facility is required to archive the final report submitted to EPA. It could find itself archiving analytical data generated by another facility. Furthermore, in the event that the sponsor may be involved in a lawsuit concerning the study, the contingent liability exposure for the test facility should be clarified.

Response: The test facility may contract with a commercial archiver under § 160.195 (b) and (g). This implies flexibility in the physical location of the archives.

3. *Retention of records*—i. *Comment:* The appropriate endpoint for specimen retention in § 160.195 should be based on the integrity of the specimens and use by the study director, or other technical personnel, not based on when QAU personnel may perform a review.

Response: Quality assurance evaluation is needed to assure that the integrity of the data are not compromised by the decision to discard specimens. For consistency, EPA is changing the wording of § 160.195(c) to concur with the wording of § 160.190(a).

ii. *Comment:* EPA should explicitly state in § 160.195(i) that when exact copies are substituted for original source as raw data, then the original may be discarded. In the past, EPA inspectors have required retention of original data sources even if exact copies existed. The burden imposed by some EPA auditors, that each copy must be signed and dated, is unrealistic. Verification of "batches" of reproduction copies is just as meaningful and would eliminate most of the unnecessary burden on personnel and time resources.

Response: Specific wording advising the discarding of raw data after copying is not necessary or useful. "True copies" will be acceptable as raw data by EPA inspectors under § 160.190. Signing and dating each copy may be impractical and an acceptable alternative method may be devised and incorporated into standard operating procedures to ensure the integrity of the copies. Laboratories are cautioned that discarding originals places an additional burden on verification of the authenticity of the copies.

III. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that the amendments are not a major rule because they do not meet any of the criteria set forth and defined in section 1(b) of the Order. Compliance costs were estimated using data from a survey of laboratories potentially affected by the revised GLP standards and from data on pesticides testing demand, and costs taken from a 1980 study of the pesticides testing industry.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and at the Office of Management and Budget, Washington, DC 20503, with OMB requests marked "Attention: Desk Officer for EPA."

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1165 (5 U.S.C. 601 et. seq.)), and it has been determined that it will not have significant economic impact on a substantial number of small businesses, small governments, or small organization. It was found that the GLP revisions will not increase the costs of health effects testing and that nonhealth effects testing costs will increase about 20 percent.

C. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the Federal Register.

Public reporting for this collection of information is estimated to average 15 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW. Washington, DC 20503.

List of Subjects in 40 CFR Part 160

Environmental protection, Good laboratory practice, Hazardous materials, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR chapter I, part 160 is revised to read as follows:

PART 160—GOOD LABORATORY PRACTICE STANDARDS

Subpart A—General Provisions

Sec.

160.1 Scope.
160.3 Definitions.
160.10 Applicability to studies performed under grants and contracts.
160.12 Statement of compliance or non-compliance.
160.15 Inspection of a testing facility.
160.17 Effects of non-compliance.

Subpart B—Organization and Personnel

160.29 Personnel.
160.31 Testing facility management.
160.33 Study director.
160.35 Quality assurance unit.

Subpart C—Facilities

160.41 General.
160.43 Test system care facilities.
160.45 Test system supply facilities.
160.47 Facilities for handling test, control, and reference substances.
160.49 Laboratory operation areas.
160.51 Specimen and data storage facilities.

Subpart D—Equipment

160.61 Equipment design.
160.63 Maintenance and calibration of equipment.

Subpart E—Testing Facilities Operation

160.81 Standard operating procedures.
160.83 Reagents and solutions.
160.90 Animal and other test system care.

Subpart F—Test, Control, and Reference Substances

160.105 Test, control, and reference substance characterization.
160.107 Test, control, and reference substance handling.
160.113 Mixtures of substances with carriers.

Subpart G—Protocol for and Conduct of a Study

160.120 Protocol.
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Subpart J—Records and Reports

160.185 Reporting of study results.
160.190 Storage and retrieval of records and data.
160.195 Retention of records.

Authority: 7 U.S.C. 136a, 136c, 136d, 136f, 136j, 136t, 136v, 136w; 21 U.S.C. 346a, 348, 371, Reorganization Plan No. 3 of 1970.

Subpart A—General Provisions

§ 160.1 Scope.

(a) This part prescribes good laboratory practices for conducting studies that support or are intended to support applications for research or marketing permits for pesticide products regulated by the EPA. This part is intended to assure the quality and integrity of data submitted pursuant to sections 3, 4, 5, 8, 18 and 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136a, 136c, 136f, 136q and 136v(c)) and sections 408 and 409 of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a, 348).

(b) This part applies to any study described by paragraph (a) of this section which any person conducts, initiates, or supports on or after October 16, 1989.

§ 160.3 Definitions.

As used in this part the following terms shall have the meanings specified:

Application for research or marketing permit includes:

(1) An application for registration, amended registration, or reregistration of a pesticide product under FIFRA sections 3, 4 or 24(c).

(2) An application for an experimental use permit under FIFRA section 5.

(3) An application for an exemption under FIFRA section 18.

(4) A petition or other request for establishment or modification of a tolerance, for an exemption for the need for a tolerance, or for other clearance under FFDCA section 408.

(5) A petition or other request for establishment or modification of a food additive regulation or other clearance by EPA under FFDCA section 409.

(6) A submission of data in response to a notice issued by EPA under FIFRA section 3(c)(2)(B).

(7) Any other application, petition, or submission sent to EPA intended to persuade EPA to grant, modify, or leave unmodified a registration or other approval required as a condition of sale or distribution of a pesticide.

Batch means a specific quantity or lot of a test, control, or reference substance that has been characterized according to § 160.105(a).

Carrier means any material, including but not limited to feed, water, soil, nutrient media, with which the test substance is combined for administration to a test system.

Control substance means any chemical substance or mixture, or any other material other than a test substance, feed, or water, that is administered to the test system in the course of a study for the purpose of establishing a basis for comparison with the test substance for known chemical or biological measurements.

EPA means the U.S. Environmental Protection Agency.

Experimental start date means the first date the test substance is applied to the test system.

Experimental termination date means the last date on which data are collected directly from the study.

FDA means the U.S. Food and Drug Administration.

FFDCA means the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 321 et seq).

FIFRA means the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136 et seq).

Person includes an individual, partnership, corporation, association, scientific or academic establishment, government agency, or organizational unit thereof, and any other legal entity.

Quality assurance unit means any person or organizational element, except the study director, designated by testing facility management to perform the duties relating to quality assurance of the studies.

Raw data means any laboratory worksheets, records, memoranda, notes, or exact copies thereof, that are the result of original observations and activities of a study and are necessary for the reconstruction and evaluation of the report of that study. In the event that exact transcripts of raw data have been

prepared (e.g., tapes which have been transcribed verbatim, dated, and verified accurate by signature), the exact copy or exact transcript may be substituted for the original source as raw data. "Raw data" may include photographs, microfilm or microfiche copies, computer printouts, magnetic media, including dictated observations, and recorded data from automated instruments.

Reference substance means any chemical substance or mixture, or analytical standard, or material other than a test substance, feed, or water, that is administered to or used in analyzing the test system in the course of a study for the purposes of establishing a basis for comparison with the test substance for known chemical or biological measurements.

Specimens means any material derived from a test system for examination or analysis.

Sponsor means:

(1) A person who initiates and supports, by provision of financial or other resources, a study;

(2) A person who submits a study to the EPA in support of an application for a research or marketing permit; or

(3) A testing facility, if it both initiates and actually conducts the study.

Study means any experiment at one or more test sites, in which a test substance is studied in a test system under laboratory conditions or in the environment to determine or help predict its effects, metabolism, product performance (efficacy studies only as required by 40 CFR 158.640), environmental and chemical fate, persistence and residue, or other characteristics in humans, other living organisms, or media. The term "study" does not include basic exploratory studies carried out to determine whether a test substance or a test method has any potential utility.

Study completion date means the date the final report is signed by the study director.

Study director means the individual responsible for the overall conduct of a study.

Study initiation date means the date the protocol is signed by the study director.

Test substance means a substance or mixture administered or added to a test system in a study, which substance or mixture:

(1) Is the subject of an application for a research or marketing permit supported by the study, or is the contemplated subject of such an application; or

(2) Is an ingredient, impurity, degradation product, metabolite, or radioactive isotope of a substance described by paragraph (1) of this definition, or some other substance related to a substance described by that paragraph, which is used in the study to assist in characterizing the toxicity, metabolism, or other characteristics of a substance described by that paragraph.

Test system means any animal, plant, microorganism, chemical or physical matrix, including but not limited to soil or water, or subparts thereof, to which the test, control, or reference substance is administered or added for study. "Test system" also includes appropriate groups or components of the system not treated with the test, control, or reference substance.

Testing facility means a person who actually conducts a study, i.e., actually uses the test substance in a test system. "Testing facility" encompasses only those operational units that are being or have been used to conduct studies.

Vehicle means any agent which facilitates the mixture, dispersion, or solubilization of a test substance with a carrier.

§ 160.10 Applicability to studies performed under grants and contracts.

When a sponsor or other person utilizes the services of a consulting laboratory, contractor, or grantee to perform all or a part of a study to which this part applies, it shall notify the consulting laboratory, contractor, or grantee that the service is, or is part of, a study that must be conducted in compliance with the provisions of this part.

§ 160.12 Statement of compliance or non-compliance.

Any person who submits to EPA an application for a research or marketing permit and who, in connection with the application, submits data from a study to which this part applies shall include in the application a true and correct statement, signed by the applicant, the sponsor, and the study director, of one of the following types:

(a) A statement that the study was conducted in accordance with this part; or

(b) A statement describing in detail all differences between the practices used in the study and those required by this part; or

(c) A statement that the person was not a sponsor of the study, did not conduct the study, and does not know whether the study was conducted in accordance with this part.

§ 160.15 Inspection of a testing facility.

(a) A testing facility shall permit an authorized employee or duly designated representative of EPA or FDA, at reasonable times and in a reasonable manner, to inspect the facility and to inspect (and in the case of records also to copy) all records and specimens required to be maintained regarding studies to which this part applies. The records inspection and copying requirements should not apply to quality assurance unit records of findings and problems, or to actions recommended and taken, except that EPA may seek production of these records in litigation or formal adjudicatory hearings.

(b) EPA will not consider reliable for purposes of supporting an application for a research or marketing permit any data developed by a testing facility or sponsor that refuses to permit inspection in accordance with this part. The determination that a study will not be considered in support of an application for a research or marketing permit does not, however, relieve the applicant for such a permit of any obligation under any applicable statute or regulation to submit the results of the study to EPA.

§ 160.17 Effects of non-compliance.

(a) EPA may refuse to consider reliable for purposes of supporting an application for a research or marketing permit any data from a study which was not conducted in accordance with this part.

(b) Submission of a statement required by § 160.12 which is false may form the basis for cancellation, suspension, or modification of the research or marketing permit, or denial or disapproval of an application for such a permit, under FIFRA section 3, 5, 6, 18, or 24 or FFDCA section 406 or 409, or for criminal prosecution under 18 U.S.C. 2 or 1001 or FIFRA section 14, or for imposition of civil penalties under FIFRA section 14.

Subpart B—Organization and Personnel

§ 160.29 Personnel.

(a) Each individual engaged in the conduct of or responsible for the supervision of a study shall have education, training, and experience, or combination thereof, to enable that individual to perform the assigned functions.

(b) Each testing facility shall maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

(c) There shall be a sufficient number of personnel for the timely and proper conduct of the study according to the protocol.

(d) Personnel shall take necessary personal sanitation and health precautions designed to avoid contamination of test, control, and reference substances and test systems.

(e) Personnel engaged in a study shall wear clothing appropriate for the duties they perform. Such clothing shall be changed as often as necessary to prevent microbiological, radiological, or chemical contamination of test systems and test, control, and reference substances.

(f) Any individual found at any time to have an illness that may adversely affect the quality and integrity of the study shall be excluded from direct contact with test systems, and test, control, and reference substances, and any other operation or function that may adversely affect the study until the condition is corrected. All personnel shall be instructed to report to their immediate supervisors any health or medical conditions that may reasonably be considered to have an adverse effect on a study.

§ 160.31 Testing facility management.

For each study, testing facility management shall:

(a) Designate a study director as described in § 160.33 before the study is initiated.

(b) Replace the study director promptly if it becomes necessary to do so during the conduct of a study.

(c) Assure that there is a quality assurance unit as described in § 160.35.

(d) Assure that test, control, and reference substances or mixtures have been appropriately tested for identity, strength, purity, stability, and uniformity, as applicable.

(e) Assure that personnel, resources, facilities, equipment, materials and methodologies are available as scheduled.

(f) Assure that personnel clearly understand the functions they are to perform.

(g) Assure that any deviations from these regulations reported by the quality assurance unit are communicated to the study director and corrective actions are taken and documented.

§ 160.33 Study director.

For each study, a scientist or other professional of appropriate education, training, and experience, or combination thereof, shall be identified as the study director. The study director has overall responsibility for the technical conduct of the study, as well as for the interpretation, analysis, documentation, and reporting of results, and represents the single point of study control. The study director shall assure that:

(a) The protocol, including any change, is approved as provided by § 160.120 and is followed.

(b) All experimental data, including observations of unanticipated responses of the test system are accurately recorded and verified.

(c) Unforseen circumstances that may affect the quality and integrity of the study are noted when they occur, and corrective action is taken and documented.

(d) Test systems are as specified in the protocol.

(e) All applicable good laboratory practice regulations are followed.

(f) All raw data, documentation, protocols, specimens, and final reports are transferred to the archives during or at the close of the study.

§ 160.35 Quality assurance unit.

(a) A testing facility shall have a quality assurance unit which shall be responsible for monitoring each study to assure management that the facilities, equipment, personnel, methods, practices, records, and controls are in conformance with the regulations in this part. For any given study, the quality assurance unit shall be entirely separate from and independent of the personnel engaged in the direction and conduct of that study. The quality assurance unit shall conduct inspections and maintain records appropriate to the study.

(b) The quality assurance unit shall:

(1) Maintain a copy of a master schedule sheet of all studies conducted at the testing facility indexed by test substance, and containing the test system, nature of study, date study was initiated, current status of each study, identity of the sponsor, and name of the study director.

(2) Maintain copies of all protocols pertaining to all studies for which the unit is responsible.

(3) Inspect each study at intervals adequate to ensure the integrity of the study and maintain written and properly signed records of each periodic inspection showing the date of the inspection, the study inspected, the phase or segment of the study inspected, the person performing the inspection, findings and problems, action recommended and taken to resolve existing problems, and any scheduled date for reinspection. Any problems which are likely to affect study integrity found during the course of an inspection shall be brought to the attention of the study director and management immediately.

(4) Periodically submit to management and the study director written status reports on each study, noting any problems and the corrective actions taken.

(5) Determine that no deviations from approved protocols or standard operating procedures were made without proper authorization and documentation.

(6) Review the final study report to assure that such report accurately describes the methods and standard operating procedures, and that the reported results accurately reflect the raw data of the study.

(7) Prepare and sign a statement to be included with the final study report which shall specify the dates inspections were made and findings reported to management and to the study director.

(c) The responsibilities and procedures applicable to the quality assurance unit, the records maintained by the quality assurance unit, and the method of indexing such records shall be in writing and shall be maintained. These items including inspection dates, the study inspected, the phase or segment of the study inspected, and the name of the individual performing the inspection shall be made available for inspection to authorized employees or duly designated representatives of EPA or FDA.

(d) An authorized employee or a duly designated representative of EPA or FDA shall have access to the written procedures established for the inspection and may request testing facility management to certify that inspections are being implemented, performed, documented, and followed up in accordance with this paragraph.

Subpart C—Facilities

§ 160.41 General.

Each testing facility shall be of suitable size and construction to facilitate the proper conduct of studies. Testing facilities which are not located within an indoor controlled environment shall be of suitable location to facilitate the proper conduct of studies. Testing facilities shall be designed so that there is a degree of separation that will prevent any function or activity from having an adverse effect on the study.

§ 160.43 Test system care facilities.

(a) A testing facility shall have a sufficient number of animal rooms or other test system areas, as needed, to ensure: proper separation of species or test systems, isolation of individual projects, quarantine or isolation of animals or other test systems, and routine or specialized housing of animals or other test systems.

(1) In tests with plants or aquatic animals, proper separation of species can be accomplished within a room or area by housing them separately in different chambers or aquaria. Separation of species is unnecessary where the protocol specifies the simultaneous exposure of two or more species in the same chamber, aquarium, or housing unit.

(2) Aquatic toxicity tests for individual projects shall be isolated to the extent necessary to prevent cross-contamination of different chemicals used in different tests.

(b) A testing facility shall have a number of animal rooms or other test system areas separate from those described in paragraph (a) of this section to ensure isolation of studies being done with test systems or test, control, and reference substances known to be biohazardous, including volatile substances, aerosols, radioactive materials, and infectious agents.

(c) Separate areas shall be provided, as appropriate, for the diagnosis, treatment, and control of laboratory test system diseases. These areas shall provide effective isolation for the housing of test systems either known or suspected of being diseased, or of being carriers of disease, from other test systems.

(d) Facilities shall have proper provisions for collection and disposal of contaminated water, soil, or other spent materials. When animals are housed, facilities shall exist for the collection and disposal of all animal waste and refuse or for safe sanitary storage of waste before removal from the testing facility. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, disease hazards, and environmental contamination.

(e) Facilities shall have provisions to regulate environmental conditions (e.g., temperature, humidity, photoperiod) as specified in the protocol.

(f) For marine test organisms, an adequate supply of clean sea water or artificial sea water (prepared from deionized or distilled water and sea salt mixture) shall be available. The ranges of composition shall be as specified in the protocol.

(g) For freshwater organisms, an adequate supply of clean water of the appropriate hardness, pH, and temperature, and which is free of contaminants capable of interfering with the study, shall be available as specified in the protocol.

(h) For plants, an adequate supply of soil of the appropriate composition, as specified in the protocol, shall be available as needed.

§ 160.45 Test system supply facilities.

(a) There shall be storage areas, as needed, for feed, nutrients, soils, bedding, supplies, and equipment. Storage areas for feed nutrients, soils, and bedding shall be separated from areas where the test systems are located and shall be protected against infestation or contamination. Perishable supplies shall be preserved by appropriate means.

(b) When appropriate, plant supply facilities shall be provided. As specified in the protocol, these include:

(1) Facilities for holding, culturing, and maintaining algae and aquatic plants.

(2) Facilities for plant growth, including, but not limited to greenhouses, growth chambers, light banks, and fields.

(c) When appropriate, facilities for aquatic animal tests shall be provided. These include, but are not limited to, aquaria, holding tanks, ponds, and ancillary equipment, as specified in the protocol.

§ 160.47 Facilities for handling test, control, and reference substances.

(a) As necessary to prevent contamination or mixups, there shall be separate areas for:

(1) Receipt and storage of the test, control, and reference substances.

(2) Mixing of the test, control, and reference substances with a carrier, e.g., feed.

(3) Storage of the test, control, and reference substance mixtures.

(b) Storage areas for test, control, and/or reference substance and for test, control, and/or reference mixtures shall be separate from areas housing the test systems and shall be adequate to preserve the identity, strength, purity, and stability of the substances and mixtures.

§ 160.49 Laboratory operation areas.

Separate laboratory space and other space shall be provided, as needed, for the performance of the routine and specialized procedures required by studies.

§ 160.51 Specimen and data storage facilities.

Space shall be provided for archives, limited to access by authorized personnel only, for the storage and retrieval of all raw data and specimens from completed studies.

Subpart D—Equipment

§ 160.61 Equipment design

Equipment used in the generation, measurement, or assessment of data and equipment used for facility environmental control shall be of appropriate design and adequate capacity to function according to the protocol and shall be suitably located for operation, inspection, cleaning, and maintenance.

§ 160.63 Maintenance and calibration of equipment.

(a) Equipment shall be adequately inspected, cleaned, and maintained. Equipment used for the generation, measurement, or assessment of data shall be adequately tested, calibrated, and/or standardized.

(b) The written standard operating procedures required under § 160.81(b)(11) shall set forth in sufficient detail the methods, materials, and schedules to be used in the routine inspection, cleaning, maintenance, testing, calibration, and/ or standardization of equipment, and shall specify, when appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The written standard operating procedures shall designate the person responsible for the performance of each operation.

(c) Written records shall be maintained of all inspection, maintenance, testing, calibrating, and/or standardizing operations. These records, containing the dates of the operations, shall describe whether the maintenance operations were routine and followed the written standard operating procedures. Written records shall be kept of nonroutine repairs performed on equipment as a result of failure and malfunction. Such records shall document the nature of the defect, how and when the defect was discovered, and any remedial action taken in response to the defect.

Subpart E—Testing Facilities Operation

§ 160.81 Standard operating procedures.

(a) A testing facility shall have standard operating procedures in writing setting forth study methods that management is satisfied are adequate to insure the quality and integrity of the data generated in the course of a study. All deviations in a study from standard operating procedures shall be authorized by the study director and shall be documented in the raw data. Significant changes in established standard operating procedures shall be

properly authorized in writing by management.

(b) Standard operating procedures shall be established for, but not limited to, the following:

(1) Test system area preparation.

(2) Test system care.

(3) Receipt, identification, storage, handling, mixing, and method of sampling of the test, control, and reference substances.

(4) Test system observations.

(5) Laboratory or other tests.

(6) Handling of test systems found moribund or dead during study.

(7) Necropsy of test systems or postmortem examination of test systems.

(8) Collection and identification of specimens.

(9) Histopathology.

(10) Data handling, storage and retrieval.

(11) Maintenance and calibration of equipment.

(12) Transfer, proper placement, and identification of test systems.

(c) Each laboratory or other study area shall have immediately available manuals and standard operating procedures relative to the laboratory or field procedures being performed. Published literature may be used as a supplement to standard operating procedures.

(d) A historical file of standard operating procedures, and all revisions thereof, including the dates of such revisions, shall be maintained.

§ 160.83 Reagents and solutions.

All reagents and solutions in the laboratory areas shall be labeled to indicate identity, titer or concentration, storage requirements, and expiration date. Deteriorated or outdated reagents and solutions shall not be used.

§ 160.90 Animal and other test system care.

(a) There shall be standard operating procedures for the housing, feeding, handling, and care of animals and other test systems.

(b) All newly received test systems from outside sources shall be isolated and their health status or appropriateness for the study shall be evaluated. This evaluation shall be in accordance with acceptable veterinary medical practice or scientific methods.

(c) At the initiation of a study, test systems shall be free of any disease or condition that might interfere with the purpose or conduct of the study. If during the course of the study, the test systems contract such a disease or condition, the diseased test systems should be isolated, if necessary. These test systems may be treated for disease or signs of disease provided that such treatment does not interfere with the study. The diagnosis, authorization of treatment, description of treatment, and each date of treatment shall be documented and shall be retained.

(d) Warm-blooded animals, adult reptiles, and adult terrestrial amphibians used in laboratory procedures that require manipulations and observations over an extended period of time or in studies that require these test systems to be removed from and returned to their test system-housing units for any reason (e.g., cage cleaning, treatment, etc.), shall receive appropriate identification (e.g., tattoo, color code, ear tag, ear punch, etc.). All information needed to specifically identify each test system within the test system-housing unit shall appear on the outside of that unit. Suckling mammals and juvenile birds are excluded from the requirement of individual identification unless otherwise specified in the protocol.

(e) Except as specified in paragraph (e)(1) of this section, test systems of different species shall be housed in separate rooms when necessary. Test systems of the same species, but used in different studies, should not ordinarily be housed in the same room when inadvertent exposure to test, control, or reference substances or test system mixup could affect the outcome of either study. If such mixed housing is necessary, adequate differentiation by space and identification shall be made.

(1) Plants, invertebrate animals, aquatic vertebrate animals, and organisms that may be used in multispecies tests need not be housed in separate rooms, provided that they are adequately segregated to avoid mixup and cross contamination.

(2) [Reserved]

(f) Cages, racks, pens, enclosures, aquaria, holding tanks, ponds, growth chambers, and other holding, rearing and breeding areas, and accessory equipment, shall be cleaned and sanitized at appropriate intervals.

(g) Feed, soil, and water used for the test systems shall be analyzed periodically to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed, soil, or water are not present at levels above those specified in the protocol. Documentation of such analyses shall be maintained as raw data.

(h) Bedding used in animal cages or pens shall not interfere with the purpose or conduct of the study and shall be changed as often as necessary to keep the animals dry and clean.

(i) If any pest control materials are used, the use shall be documented. Cleaning and pest control materials that interfere with the study shall not be used.

(j) All plant and animal test systems shall be acclimatized to the environmental conditions of the test, prior to their use in a study.

Subpart F—Test, Control, and Reference Substances

§ 160.105 Test, control, and reference substance characterization.

(a) The identity, strength, purity, and composition, or other characteristics which will appropriately define the test, control, or reference substance shall be determined for each batch and shall be documented before its use in a study. Methods of synthesis, fabrication, or derivation of the test, control, or reference substance shall be documented by the sponsor or the testing facility, and the location of such documentation shall be specified.

(b) When relevant to the conduct of the study the solubility of each test, control, or reference substance shall be determined by the testing facility or the sponsor before the experimental start date. The stability of the test, control, or reference substance shall be determined before the experimental start date or concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(c) Each storage container for a test, control, or reference substance shall be labeled by name, chemical abstracts service number (CAS) or code number, batch number, expiration date, if any, and, where appropriate, storage conditions necessary to maintain the identity, strength, purity, and composition of the test, control, or reference substance. Storage containers shall be assigned to a particular test substance for the duration of the study.

(d) For studies of more than 4 weeks experimental duration, reserve samples from each batch of test, control, and reference substances shall be retained for the period of time provided by § 160.195.

(e) The stability of test, control, and reference substances under storage conditions at the test site shall be known for all studies.

§ 160.107 Test, control, and reference substance handling.

Procedures shall be established for a system for the handling of the test, control, and reference substances to ensure that:

(a) There is proper storage.

(b) Distribution is made in a manner designed to preclude the possibility of contamination, deterioration, or damage.

(c) Proper identification is maintained throughout the distribution process.

(d) The receipt and distribution of each batch is documented. Such documentation shall include the date and quantity of each batch distributed or returned.

§ 160.113 Mixtures of substances with carriers.

(a) For each test, control, or reference substance that is mixed with a carrier, tests by appropriate analytical methods shall be conducted:

(1) To determine the uniformity of the mixture and to determine, periodically, the concentration of the test, control, or reference substance in the mixture.

(2) When relevant to the conduct of the study, to determine the solubility of each test, control, or reference substance in the mixture by the testing facility or the sponsor before the experimental start date.

(3) To determine the stability of the test, control, or reference substance in the mixture before the experimental start date or concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(b) Where any of the components of the test, control, or reference substance carrier mixture has an expiration date, that date shall be clearly shown on the container. If more than one component has an expiration date, the earliest date shall be shown.

(c) If a vehicle is used to facilitate the mixing of a test substance with a carrier, assurance shall be provided that the vehicle does not interfere with the integrity of the test.

Subpart G—Protocol for and Conduct of a Study

§ 160.120 Protocol.

(a) Each study shall have an approved written protocol that clearly indicates the objectives and all methods for the conduct of the study. The protocol shall contain but shall not necessarily be limited to the following information:

(1) A descriptive title and statement of the purpose of the study.

(2) Identification of the test, control, and reference substance by name, chemical abstracts service (CAS) number or code number.

(3) The name and address of the sponsor and the name and address of the testing facility at which the study is being conducted.

(4) The proposed experimental start and termination dates.

(5) Justification for selection of the test system.

(6) Where applicable, the number, body weight range, sex, source of supply, species, strain, substrain, and age of the test system.

(7) The procedure for identification of the test system.

(8) A description of the experimental design, including methods for the control of bias.

(9) Where applicable, a description and/or identification of the diet used in the study as well as solvents, emulsifiers and/or other materials used to solubilize or suspend the test, control, or reference substances before mixing with the carrier. The description shall include specifications for acceptable levels of contaminants that are reasonably expected to be present in the dietary materials and are known to be capable of interfering with the purpose or conduct of the study if present at levels greater than established by the specifications.

(10) The route of administration and the reason for its choice.

(11) Each dosage level, expressed in milligrams per kilogram of body or test system weight or other appropriate units, of the test, control, or reference substance to be administered and the method and frequency of administration.

(12) The type and frequency of tests, analyses, and measurements to be made.

(13) The records to be maintained.

(14) The date of approval of the protocol by the sponsor and the dated signature of the study director.

(15) A statement of the proposed statistical method to be used.

(b) All changes in or revisions of an approved protocol and the reasons therefore shall be documented, signed by the study director, dated, and maintained with the protocol.

§ 160.130 Conduct of a study.

(a) The study shall be conducted in accordance with the protocol.

(b) The test systems shall be monitored in conformity with the protocol.

(c) Specimens shall be identified by test system, study, nature, and date of collection. This information shall be located on the specimen container or shall accompany the specimen in a manner that precludes error in the recording and storage of data.

(d) In animal studies where histopathology is required, records of gross findings for a specimen from postmortem observations shall be available to a pathologist when examining that specimen histopathologically.

(e) All data generated during the conduct of a study, except those that are generated by automated data collection systems, shall be recorded directly, promptly, and legibly in ink. All data entries shall be dated on the day of entry and signed or initialed by the person entering the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or identified at the time of the change. In automated data collection systems, the individual responsible for direct data input shall be identified at the time of data input. Any change in automated data entries shall be made so as not to obscure the original entry, shall indicate the reason for change, shall be dated, and the responsible individual shall be identified.

§ 160.135 Physical and chemical characterization studies.

(a) All provisions of the GLP standards shall apply to physical and chemical characterization studies designed to determine stability, solubility, octanol water partition coefficient, volatility, and persistence (such as biodegradation, photodegradation, and chemical degradation studies) of test, control, or reference substances.

(b) The following GLP standards shall not apply to studies, other than those designated in paragraph (a) of this section, designed to determine physical and chemical characteristics of a test, control, or reference substance:

§ 160.31 (c), (d), and (g)
§ 160.35 (b) and (c)
§ 160.43
§ 160.45
§ 160.47
§ 160.49
§ 160.81(b) (1), (2), (6) through (9), and (12)
§ 160.90
§ 160.105 (a) through (d)
§ 160.113
§ 160.120(a) (5) through (12), and (15)
§ 160.185(a) (5) through (8), (10), (12), and (14)
§ 160.195 (c) and (d)

Subparts H and I—[Reserved]

Subpart J—Records and Reports

§ 160.185 Reporting of study results.

(a) A final report shall be prepared for each study and shall include, but not necessarily be limited to, the following:

(1) Name and address of the facility performing the study and the dates on which the study was initiated and was completed, terminated, or discontinued.

(2) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(3) Statistical methods employed for analyzing the data.

(4) The test, control, and reference substances identified by name, chemical abstracts service (CAS) number or code number, strength, purity, and composition, or other appropriate characteristics.

(5) Stability and, when relevant to the conduct of the study the solubility of the test, control, and reference substances under the conditions of administration.

(6) A description of the methods used.

(7) A description of the test system used. Where applicable, the final report shall include the number of animals used, sex, body weight range, source of supply, species, strain and substrain, age, and procedure used for identification.

(8) A description of the dosage, dosage regimen, route of administration, and duration.

(9) A description of all circumstances that may have affected the quality or integrity of the data.

(10) The name of the study director, the names of other scientists or professionals and the names of all supervisory personnel, involved in the study.

(11) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis.

(12) The signed and dated reports of each of the individual scientists or other professionals involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(13) The locations where all specimens, raw data, and the final report are to be stored.

(14) The statement prepared and signed by the quality assurance unit as described in § 160.35(b)(7).

(b) The final report shall be signed and dated by the study director.

(c) Corrections or additions to a final report shall be in the form of an amendment by the study director. The amendment shall clearly identify that part of the final report that is being added to or corrected and the reasons for the correction or addition, and shall be signed and dated by the person responsible. Modification of a final report to comply with the submission requirements of EPA does not constitute a correction, addition, or amendment to a final report.

(d) A copy of the final report and of any amendment to it shall be maintained by the sponsor and the test facility.

§ 160.190 Storage and retrieval of records and data.

(a) All raw data, documentation, records, protocols, specimens, and final reports generated as a result of a study shall be retained. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. Correspondence and other documents relating to interpretation and evaluation of data, other than those documents contained in the final report, also shall be retained.

(b) There shall be archives for orderly storage and expedient retrieval of all raw data, documentation, protocols, specimens, and interim and final reports. Conditions of storage shall minimize deterioration of the documents or specimens in accordance with the requirements for the time period of their retention and the nature of the documents of specimens. A testing facility may contract with commercial archives to provide a repository for all material to be retained. Raw data and specimens may be retained elsewhere provided that the archives have specific reference to those other locations.

(c) An individual shall be identified as responsible for the archives.

(d) Only authorized personnel shall enter the archives.

(e) Material retained or referred to in the archives shall be indexed to permit expedient retrieval.

§ 160.195 Retention of records.

(a) Record retention requirements set forth in this section do not supersede the record retention requirements of any other regulations in this subchapter.

(b) Except as provided in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for whichever of the following periods is longest:

(1) In the case of any study used to support an application for a research or marketing permit approved by EPA, the period during which the sponsor holds any research or marketing permit to which the study is pertinent.

(2) A period of at least 5 years following the date on which the results of the study are submitted to the EPA in support of an application for a research or marketing permit.

(3) In other situations (e.g., where the study does not result in the submission of the study in support of an application for a research or marketing permit), a period of at least 2 years following the date on which the study is completed, terminated, or discontinued.

(c) Wet specimens, samples of test, control, or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage, shall be retained only as long as the quality of the preparation affords evaluation. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. In no case shall retention be required for longer periods than those set forth in paragraph (b) of this section.

(d) The master schedule sheet, copies of protocols, and records of quality assurance inspections, as required by § 160.35(c) shall be maintained by the quality assurance unit as an easily accessible system of records for the period of time specified in paragraph (b) of this section.

(e) Summaries of training and experience and job descriptions required to be maintained by § 160.29(b) may be retained along with all other testing facility employment records for the length of time specified in paragraph (b) of this section.

(f) Records and reports of the maintenance and calibration and inspection of equipment, as required by § 160.63 (b) and (c), shall be retained for the length of time specified in paragraph (b) of this section.

(g) If a facility conducting testing or an archive contracting facility goes out of business, all raw data, documentation, and other material specified in this section shall be transferred to the archives of the sponsor of the study. The EPA shall be notified in writing of such a transfer.

(h) Specimens, samples, or other non-documentary materials need not be

retained after EPA has notified in writing the sponsor or testing facility holding the materials that retention is no longer required by EPA. Such notification normally will be furnished upon request after EPA or FDA has completed an audit of the particular study to which the materials relate and EPA has concluded that the study was conducted in accordance with this part.

(i) Records required by this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records.

[FR Doc. 89-19087 Filed 8-16-89; 8:45 am]
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federal register

Thursday
August 17, 1989

Part V

Department of Education

National Center for Research and Development in the Education of Gifted and Talented Children and Youth; Invitation of Applications for New Awards for Fiscal Year 1990; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.206R]

National Center for Research and Development in the Education of Gifted and Talented Children and Youth; Invitation of Applications for New Awards for Fiscal Year 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The National Center for Research and Development in the Education of Gifted and Talented Children and Youth (Gifted and Talented Education Research Center) is established pursuant to a requirement in the Jacob K. Javits Gifted and Talented Students Education Act of 1988 (Act), Title IV, part B of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The purpose of the Act is to provide financial assistance to State and local educational agencies, institutions of higher education, and other public and private agencies and organizations, to initiate a coordinated program of research, demonstration projects, personnel training, and similar activities designed to build a nationwide capability in elementary and secondary schools to identify and meet the special educational needs of gifted and talented students.

Deadline for Transmittal of Applications: November 15, 1989.

Available Funds: The Department estimates that $1,500,000 will be available for this competition.

Estimated Size of Award: $1,500,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 5 years.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace Grants)).

Description of Program:

Congressional Findings Regarding the Education of Gifted and Talented Students

The Act contains the following Congressional findings; applicants may wish to consider these findings in preparing their applications.

(a) Gifted and talented students are a national resource vital to the future of the Nation and its security and well-being.

(b) Unless the special abilities of gifted and talented students are recognized and developed during their elementary and secondary school years, much of their special potential for contributing to the national interest is likely to be lost.

(c) Gifted and talented students from economically disadvantaged families and areas, and students of limited English proficiency are at greatest risk of being unrecognized and of not being provided adequate or appropriate educational services.

(d) State and local educational agencies and private nonprofit schools often lack the necessary specialized resources to plan and implement effective programs for the early identification of gifted and talented students for the provision of educational services and programs appropriate to their special needs.

(e) The Federal Government can best carry out the limited but essential role of stimulating research and development and personnel training, and providing a national focal point of information and technical assistance, that is necessary to ensure that our Nation's schools are able to meet the special educational needs of gifted and talented students, and thereby to serve a profound national interest.

Definitions

The following definitions apply to the terms used in this notice:

(a) "Gifted and talented students" means children and youth who give evidence of high performance capability in areas such as intellectual, creative, artistic or leadership capacity, or in specific academic fields, and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.

(b) "Institution of higher education" has the same meaning given such term in section 435(b) of the Higher Education Act of 1965, as amended.

Eligible Parties

The following are eligible to apply for the Gifted and Talented Education Research Center award:

(a) Institutions of higher education.

(b) State educational agencies.

(c) A combination or consortium of institutions of higher education or State educational agencies, or both.

Mission of the Gifted and Talented Education Research Center

The Department, after consultation with the field, has chosen to encourage the widest possible array of proposals by defining the Center essentially in terms of the Act. The purpose of the Gifted and Talented Education Research Center is to conduct—

(a) Research on methods and techniques for identifying and teaching gifted and talented students; and

(b) Program evaluations, surveys, and the collection, analysis, and development of information needed to accomplish the purposes of the Act.

Structure and Requirements of the Gifted and Talented Education Research Center

The Gifted and Talented Education Research Center shall have a Director.

The Secretary may authorize the Director to carry out such functions of the Gifted and Talented Education Research Center as may be agreed upon through arrangements with other institutions of higher education, State or local educational agencies, or other public or private agencies and organizations. Applicants who plan to make such arrangements should describe the arrangements they plan to make in their application narratives.

The Gifted and Talented Education Research Center will be expected to cooperate with the administrative unit in the Department of Education. Responsibilities of the administrative unit are to administer programs under the Act, coordinate all programs for gifted and talented students administered by the Department, and serve as a focal point of national leadership and information on the educational needs of gifted and talented students and the availability of educational services to meet those needs. Applicants should describe in their applications how they propose to work with the Department of Education's administrative unit.

Grantees must use funds received under this program to supplement and make more effective the expenditure of state and local funds, and of Federal funds made available under chapter 2 of Title I and Title II of the ESEA, for the

education of gifted and talented students.

Participation of Private School Students and Teachers

Under the Act, the Secretary is required to ensure, where appropriate, that provision is made for the equitable participation of students and teachers in private nonprofit elementary and secondary schools. Therefore, applicants are strongly encouraged to propose activities that involve such participation, as in, for example, research activities that include students and teachers from these private schools as research subjects, or include the study of these private schools' programs for gifted and talented students.

Priorities

Absolute Priorities

The Secretary gives an absolute preference to applications that propose:

(a) Activities pertaining to the identification of gifted and talented students who may not be identified through traditional assessment methods (including economically disadvantaged individuals, individuals of limited English proficiency, and individuals with handicaps) and to education programs designed to include gifted and talented students from such groups.

(b) Activities designed to develop or improve the ability of a significant number of the Nation's schools to plan, conduct, and improve programs for the identification and education of gifted and talented students, and that may also be designed to utilize the cooperative efforts and participation of State and local educational agencies, institutions of higher education, and other public and private agencies and organizations (including business, industry, and labor).

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that include these activities.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Jacob K. Javits Gifted and Talented Students Education Act of 1988, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (15 points)

(i) The Secretary reviews each applicant to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (7 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.206R), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.206R), Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

Note: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.

Certification Regarding Drug-Free Workplace Requirements: Grantees Other Than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: William Weston or Ivor Pritchard, Office of Research, Office of Educational Research and Improvement, Room 617, 555 New Jersey Avenue, NW., Washington, DC 20208–5646. Phone: (202) 357–6223.

Program Authority: 20 U.S.C. 3061–3068.

Dated: August 9, 1989.

Bruno V. Manno,

Acting Assitant Secretary for Educational Research and Improvement.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State; B County; C Municipal; D Township; E Interstate; F Intermunicipal; G Special District; H Independent School Dist.; I State Controlled Institution of Higher Learning; J Private University; K Indian Tribe; L Individual; M Profit Organization; N Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award; B Decrease Award; C Increase Duration; D Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 0 6R

TITLE: Gifted and Talented Education Research Center

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The Panelists who will review the applications and make recommendations to the Secretary will evaluate the applications according to the EDGAR selection criteria provided in this application package. To facilitate fair consideration of the merits of all applications, you are encouraged to organize the application narrative as follows:

1. Begin with an Abstract; that is, a 500 word summary of the Gifted and Talented Education Research Center as proposed in the application narrative.

2. Describe the activities of the proposed Gifted and Talented Education Research Center as a whole for the course of the projected 5 year period, including the nature of its mission, organization, personnel, and resources. This description should be followed by a description of each individual activity proposed. For each activity, identify the nature of the activity; the significance of its objectives; the importance of achieving those objectives, including potential products and other results; the activity's design and methods to be utilized; the degree of involvement and the qualifications of key personnel; the activity's budget; the way in which the activity will be evaluated; and the resources that will be used to carry out the activity.

3. If you intend to carry out some of the Center's functions through arrangements with other institutions of higher education, State or local education agencies, or other public or private agencies and organizations, describe those arrangements.

4. Describe how you propose to work with the Department of Education's administrative unit that will administer programs under the Act.

5. Describe any opportunities you will provide for the participation of students and teachers in private nonprofit elementary and secondary schools in Gifted and Talented Education Research Center activities.

6. Include any other pertinent information that might assist the Secretary in reviewing the application.

7. Please limit the Application Narrative to no more than 100 double-spaced, typed pages (on one side only). You are encouraged to provide resumes of key personnel as an appendix to the narrative.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 280 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0638, Washington, DC 20503.

(Information collection approved under OMB control number 1850–0638. Expiration date: 10/31/1990.)

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

[FR Doc. 89-19105 Filed 8-16-89; 8:45 am]
BILLING CODE 4000-01-C

federal register

Thursday
August 17, 1989

Part VI

Department of Justice

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care, Treatment and Instruction of Inmates; Smoking/No Smoking Areas; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care, Treatment and Instruction of Inmates; Smoking/No Smoking Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document the Bureau of Prisons is proposing to amend its regulations on Smoking/No Smoking Areas within its institutions and offices. The amendment requires Chief Executive Officers to designate by the placement of signs each area that may be used as a smoking area. The absence of a sign shall be interpreted as a no smoking area. This amendment is intended to provide for a clean air environment and to protect the health and safety of staff and inmates.

DATES: Comments by October 2, 1989.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on Smoking/No Smoking Areas. A final rule on this subject was published in the **Federal Register** March 19, 1986 (51 FR 9615). This amendment restricts the areas where smoking is permitted and changes the presumption, in the absence of a sign, from smoking to no smoking.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views or arguments in writing to the Bureau of Prisons, Room 760, 320 First Street NW., Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 551

Prisoners.

In consideration of the foregoing, it is proposed to amend part 551 in subchapter C of 28 CFR, chapter V as set forth below.

Dated: August 11, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. In part 551, subpart N is revised to read as follows:

Subpart N—Smoking/No Smoking Areas

Sec.
551.160 Purpose and scope.
551.161 Definition.
551.162 Designated smoking areas.
551.163 Notice of smoking areas.

Subpart N—Smoking/No Smoking Areas

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 551.160 Purpose and scope.

To advance towards becoming a clean air environment and to protect the health and safety of staff and inmates, the Bureau of Prisons will restrict areas and circumstances in which smoking is permitted within its institutions and offices.

(a) All areas of Bureau of Prisons facilities and vehicles are no smoking areas unless specifically designated as smoking areas by the Chief Executive Officer consistent with the guidelines set forth in this rule.

(b) Chief Executive Officers shall limit smoking areas to a minimum number of locations, consistent with effective operations. Under no circumstances shall smoking be permitted in the following areas, except as noted in § 551.162(a):

(1) Elevators,
(2) Storage Rooms and Warehouses,
(3) Libraries,
(4) Corridors and Halls,
(5) Dining Facilities,
(6) Kitchen and Food Preparation Areas,
(7) Medical/Dental Care Delivery Areas,
(8) Institution/Government Vehicles,
(9) Administrative Areas and Offices,
(10) Auditoriums,
(11) Class and Conference Rooms,
(12) Gymnasiums and Exercise Rooms, and
(13) Restrooms.

§ 551.161 Definition.

For purpose of this rule, smoking is defined as carrying or inhaling a lighted cigar, cigarette, pipe or other lighted tobacco products.

§ 551.162 Designated smoking areas.

(a) Chief Executive Officers shall identify "smoking areas" for staff and inmates, especially for those who may be employed in, or restricted to, a nonsmoking area for an extended time.

(b) To the extent practicable, Chief Executive Officers shall accommodate nonsmoking inmates in nonsmoking living quarters. The sharing of a cell or living area between a smoker and a nonsmoker will be avoided except where impractical due to circumstances, and then may be done only for limited duration.

§ 551.163 Notice of smoking areas.

The Chief Executive Officer shall ensure that smoking areas are clearly identified for staff and inmates by the appropriate placement of signs. The absence of a sign shall be interpreted as indicating a no smoking area. Appropriate disciplinary action will be taken for failure to observe smoking restrictions.

[FR Doc. 89–19356 Filed 8–16–89; 8:45 am]

BILLING CODE 4410-05-M

federal register

Thursday
August 17, 1989

Part VII

Department of Transportation

Urban Mass Transportation Administration

Section 3 and 9 Grant Applications; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1989, Public Law 100–457, signed into law on September 30, 1988, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Date obligated
None			

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Date obligated
Norwalk Transit District, Norwalk, CT	CT–90–X137	$2,987,200	6/30/89
City of Boise, Boise, ID	ID–90–X017	814,514	(1)
Lowell Regional Transit Authority, Lowell, MA	MA–90–X097	1,027,248	6/29/89
Casco Bay Island Transit District, Portland, ME	ME–90–X043	92,400	6/30/89
Suburban Mobility Authority for Regional Transportation, Detroit, MI	MI–90–X117	306,836	(1)
City of Greensboro, Greensboro, NC	NC–90–X096	256,000	6/26/89
Manchester Transit Authority, Manchester, NH	NH–90–X019	620,362	(1)
Regional Transportation Commission, Las Vegas, NV	NV–90–X012	1,965,770	6/30/89
Mid-Mon Valley Transit Authority, Monessen, PA	PA–90–X175	1,163,756	6/30/89
Utah Transit Authority, Salt Lake City, UT	UT–90–X013–01	960,000	7/18/89

[1] The Section 9 grants shown without an obligation date are awaiting 13(c) certification from the Department of Labor. After receipt of the certification the grants will be obligated.

Issued on: August 1, 1989.

Roland J. Mross,

Deputy Administrator.

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Part VIII

Federal Election Commission

11 CFR Parts 100, 102, 110, 114, and 9034

Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Final Rule

FEDERAL ELECTION COMMISSION

[Notice 1989-13]

11 CFR Parts 100, 102, 110, 114 and 9034

Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions

AGENCY: Federal Election Commission.

ACTION: Final Rule; Transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR 110.3, 110.4, 110.5 and 110.6, concerning affiliated committees, transfers, contributions in the name of another, annual contribution limits and earmarked contributions. These regulations implement the contribution limitations and prohibitions established by 2 U.S.C. 441a, 441e, 441f and 441g, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. 431 *et seq.* The revisions clarify the Commission's application of the affiliation rules and resolve several issues concerning transfers between committees authorized by the same candidate. The amended rules also update the reporting requirements for conduits of earmarked contributions and define the term "conduit." In addition, the Commission has made several corresponding amendments to 11 CFR 100.5(g), 102.2(b), 110.1(f), 110.8(d), 114.5(g), 114.8(g) and 9034.4(d) to bring those provisions into conformity with the amendments to 11 CFR 110.3 through 110.6. Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9039(c). A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 110.3, 110.4, 110.5 and 110.6, which concern affiliation of political committees, transfers between committees, certain prohibited contributions, annual contribution limits for individuals, and earmarked contributions directed through conduits or intermediaries. The Commission is also publishing conforming amendments to §§ 100.5, 102.2, 110.1, 110.8, 114.5, 114.8 and 9034.4 to reflect the changes made in §§ 110.3 through 110.6 of the regulations.

On July 30, 1986 the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 51 FR 27183. Ten written comments were received in response to the Notice. A public hearing was held on September 17, 1986, at which three witnesses presented testimony on the issues raised in the rulemaking.

Section 438(d) of title 2, United States Code, and 26 U.S.C. 9039(c), require that any rules or regulations prescribed by the Commission to carry out the provisions of titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on August 14, 1989. Please note that the methods of calculating legislative days are different under these two provisions. Although most of the regulations contained in this document implement title 2 of the United States Code, the conforming amendment to 11 CFR 9034.4 implements title 26. Consequently, the legislative days for the revisions to 11 CFR parts 100, 102, 110 and 114 will be counted separately from the legislative days for the conforming amendment to 11 CFR 9034.4. Thus, the title 2 rules and the title 26 rules may be promulgated on different dates, since the expiration of the time periods may not coincide.

Explanation and Justification

In revising §§ 110.3 through 110.6 of the regulations, the Commission has addressed several significant issues. The principal areas in which the rules published today differ from the previous language of these sections are as follows:

(1) The factors used to evaluate whether committees are commonly established, financed, maintained or controlled and therefore affiliated (*see* § 110.3(a)(3));

(2) Transfers of funds between previous and current federal campaign committees of the same candidate (*see* §110.3(c)(4));

(3) Transfers of funds between principal campaign committees of a candidate who is concurrently seeking more than one office (*see* § 110.3(c)(5));

(4) New language on transfers of funds from a candidate's nonfederal campaign to that candidate's federal campaign committee (*see* § 110.3(c)(6));

(5) New language defining the term "conduit or intermediary" (*see* § 110.6(b)(2)); and

(6) Reporting of earmarked contributions by both the recipient candidate's committee and the conduit or intermediary (*see* § 110.6(c)).

After considering the public comments and testimony on the current presumption that state and local party committees are affiliated, and thus subject to common contribution limits, the Commission has decided to retain the current language.

The Notice of Proposed Rulemaking also raised questions concerning affiliation between a candidate's authorized committee and an unauthorized committee established, financed, maintained or controlled by the candidate or the candidate's campaign organization. Having evaluated the two public comments and testimony on this complex area, the Commission has decided to continue to apply the affiliation factors at 11 CFR 110.3(a)(3)(ii) in these instances.

Another significant issue in this rulemaking concerns the exercise of direction or control by a conduit over the choice of the recipient candidate for earmarked contributions. The Commission has decided to retain the wording of the current rules at § 110.6(d) and to continue to rely upon the standards it has delineated in previous decisions.

Finally, the Commission has included new subheadings in each paragraph of §§ 110.3, 110.4, 110.5, and 110.6 for the convenience of the reader.

Section 110.3 Contribution Limitations for Affiliated Committees and Political Party Committees; Transfers (2 U.S.C. 441a(a)(5), 441a(a)(4))

This section has been substantially revised to resolve a number of issues that have been raised during the administration and enforcement of this provision since it was promulgated in 1977. In addition, § 110.3 has been retitled "Contribution limitations for affiliated committees and political party committees; Transfers" to reflect that several provisions pertaining to political party committees are located in this section.

Section 110.3 has been reorganized to some extent. As in the current rules, paragraph (a) implements contribution limitations for affiliated committees and explains when committees are considered affiliated. Revised paragraph (b) explains how the affiliation rules affect the contribution limits for political

party committees. Revised paragraph (c) consolidates the rules located in current paragraphs (a)(2) and (c) concerning transfers between committees.

Section 110.3(a) Contribution Limitations for Affiliated Committees

Section 110.3(a), as revised, follows current § 110.3(a)(1) by applying the FECA's contribution limits to affiliated committees other than political party committees. This paragraph implements the "anti-proliferation" provisions of 2 U.S.C. 441a(a)(5).

Paragraph (a)(1) states that general rule the committees commonly established, financed, maintained or controlled are affiliated, and are therefore subject to common contribution limits. The new rules modify current paragraph (a)(1) in several respects. First, the revisions specify that the shared contribution limits for affiliated committees apply to both contributions made by those committees and to contributions they receive. Second, the revisions clarify that committees may be affiliated even if one of them is not a political committee as defined in 11 CFR 100.5. Several previous advisory opinions (AOs) have made this point. *e.g.* AOs 1987–12, 1985–2, 1984–46 and 1982–52. Next, revisions to paragraph (a)(1)(i) clarify that the common contribution limits apply to all the authorized committees of a candidate for the same election. Separate contribution limits would apply to a candidate's authorized committees for different elections. However, transfers between authorized committees will in some situations require that the contributions transferred be aggregated and subject to a single contribution limit. *See* 11 CFR 110.3(c). Finally, paragraph (a)(1)(ii) has been revised to state that in appropriate cases, the term "local unit" may include a franchisee, licensee, or state or regional association. *See* AOs 1983–46, 1979–38, 1978–61 and 1977–70.

A list of committees viewed as *per se* affiliated is set forth in paragraph (a)(2). This list is essentially the same as the one set forth in current paragraph (a)(1)(ii), which was taken from the House and Conference reports on the 1976 amendments to the FECA. H.R. Rep. No. 94–917, 94th Cong., 2d Sess. 6 (1976); H.R. Conf. Rep. No. 94–1057, 94th Cong., 2d Sess. 58 (1976).

One commenter questioned whether the proposed revisions to § 110.3(a) were intended to change the Commission's view of Congressional intent to exclude the relationship between a labor federation, such as the AFL–CIO, and an international or national labor organization from the affiliation rules. The commenter pointed out that the legislative history of the 1976 FECA Amendments evidences a decision by Congress to continue the *status quo* by permitting separate contribution limits for the separate segregated fund of a labor federation structured along the lines of the AFL–CIO and the separate segregated fund of an international or national labor organization that is a member of the labor federation. The comment argues that this view is reflected in the set of five interrelated anti-proliferation rules first stated by Rep. Wayne Hays, Chairman of the House Administration Committee, during a markup session on the 1976 FECA Amendments and later restated in the House Committee and the Conference Committee reports on those amendments. H.R. Rep. No. 94–917, 94th Cong., 2d Sess. 6 (1976); H.R. Conf. Rep. No. 94–1057, 94th Cong., 2d Sess. 58 (1976). The comment concludes from the legislative history that Congress was well aware of the existence of separate segregated funds established by such labor federations and viewed them as separate from political committees established by their constituent members, entitled to separate contribution limits. Consequently, the commenter assumed that the language proposed in the NPRM was based on an intention not to apply the affiliation factors in paragraph (a)(3)(ii) to labor federations. However, if that assumption was incorrect, the comment suggested several specific revisions to the affiliation factors, which are addressed below in the discussion of those paragraphs.

On several occasions, the Commission has determined that the AFL–CIO COPE–PCC and the separate segregated funds of the AFL–CIO's constituent member unions were not affiliated under the anti-proliferation rules established by 2 U.S.C. 441a(a)(5). *See* MURs 354, 783 and 1605. These conclusions were based upon the legislative history of section 441a(a)(5) cited by the commenter. Current §§ 100.5(g) and 110.3(a) incorporate the anti-proliferation rules stated by Rep. Hays and the congressional reports. These provisions are included in the new rules with minor clarifying revisions. Consequently, the revisions to §§ 110.3(a) and 100.5(g) do not alter the Commission's previous decisions in MURs 354, 783 and 1605. Under the revised rules, there are separate contribution limits for the separate segregated funds of labor federations and the separate segregated funds of their member national and international unions. However, this exception to the anti-proliferation rules only applies to labor federations whose relationships with their member unions are structured along the lines of the relationship that existed between the AFL–CIO and its member unions at the time the 1976 amendments to the FECA were enacted by Congress.

New paragraph (a)(3) makes several revisions to the "indicia of affiliation" currently found in § 110.3(a)(1)(iii). First, the terminology has been changed by substituting "circumstantial factors" for "indicia." Next, new paragraph (a)(3)(i) has been added to explain that in making affiliation determinations, the Commission may examine a variety of relationships, including the relationship between organizations sponsoring committees, between the committees themselves, or between one sponsoring organization and a committee established by another sponsoring organization. The NPRM suggested including language to clarify that the factors are used to determine whether committees are affiliated. The Commission has now decided to add additional language to provide a more complete explanation of the role of the affiliation factors set forth in paragraphs (a)(3)(ii) (A) through (J). The Commission will examine the factors in evaluating the overall relationship between committees or their sponsoring organizations to determine whether there is evidence that the committees are commonly established, financed, maintained or controlled, and therefore affiliated. The Commission notes that the factors set out in § 110.3(a)(3)(ii) could have been used to evaluate the relationships that result when an entity creates smaller organizational units, as well as the relationships that result when entities join together to create a larger organization.

The factors, themselves, have been revised to rework proposed language that could have been interpreted more broadly or narrowly than intended, and to explain more clearly the type of activity covered by each factor. Several of the revisions have been made in response to legitimate concerns raised by the two public comments that discussed the current indicia of affiliation.

The first factor in paragraph (a)(3)(ii)(A) concerns the ownership of a controlling interest in the voting stock or securities of an organization sponsoring another committee. This factor is based on current paragraph (a)(1)(iii)(A).

Paragraph (a)(3)(ii)(B) follows current paragraph (a)(1)(iii)(B) by addressing the authority or ability of one sponsoring organization or committee to direct or participate in the governance of another

sponsoring organization or committee through its constitution, bylaws, contracts or other rules. One comment on the proposed rules suggested that this indicium also include the ability to influence the decisions of the officers or members of another entity. Another commenter urged the Commission to revise this factor to consider only significant authority to govern another sponsoring organization or committee. The Commission has decided, instead of including either of these suggestions, to include new language in revised paragraph (a)(3)(ii)(B) to explicitly recognize that formal or informal practices or procedures should be considered in examining the relationship between the organizations or committees.

Revised paragraph (a)(3)(ii)(C) concerns a committee's or sponsoring organization's authority or ability to hire, appoint, demote or otherwise control the officers or decision-making employees of another sponsoring organization or committee. This paragraph is based on current paragraph (a)(1)(iii)(C). One commenter recommended revising this factor to focus only on situations where the authority to hire, appoint or demote is "significant." Another comment recommended that the current language, which focuses on the ability to influence decision-making, be retained. The Commission has revised this factor by including the authority or ability to otherwise control the decisionmakers because "control" is a more specific term that more accurately describes the kind of involvement that could lead to affiliation.

Revised paragraph (a)(3)(ii) contains two new factors in paragraphs (D) and (E) which facilitate consideration of whether the sponsoring organizations or committees have common or overlapping members, officers or employees. One public comment observed that common or overlapping membership with another sponsoring organization or political committee should not be one of the criteria because it merely reflects similar goals for the two organizations or committees. For this reason, the Commission has refined the proposed rule to clarify that the presence of common or overlapping members, officers or employees is only significant when it indicates a formal or ongoing relationship between the committees or sponsoring organizations.

Another comment argued that the proposed rules did not clearly cover consecutive roles an individual may have in various organizations or committees. Therefore, the comment recommended that the Commission add new language to the regulations to permit consideration of whether a political committee or sponsoring organization has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee. The Commission has now included new paragraph (a)(3)(ii)(F) to address this type of situation. New paragraph (F) explains that consecutive roles are a consideration only when they reveal a formal or ongoing relationship between sponsoring organizations or committees or when they indicate the creation of a successor entity.

New paragraph (a)(3)(ii)(G), which is based on current paragraph (a)(1)(iii)(E), focuses on the funding of one committee or sponsoring organization by another. This paragraph has been amended to reflect the fact that the provision of goods may be as significant as the provision of funding. Also, language has been added to clarify that occasional transfers resulting from joint fundraising activities under 11 CFR 102.17 are not considered in affiliation determinations. Under section 441a(a)(5)(A) of the FECA, the contribution limits for affiliated committees do not limit transfers between otherwise unaffiliated committees of funds raised in accordance with legitimate joint fundraising activities. The proposed rules had also included a reference to 11 CFR 1026(b)(1)(iv) regarding collecting agents for the separate segregated fund of a federation of labor organizations. This reference has been deleted from the final rules because it did not involve a joint fundraising situation.

The single comment on the current financing indicium of affiliation suggested including financing that does not involve the direct passing or payment of funds between two entities as an indicium of affiliation. The comment cited instances where the Commission has considered efforts by one organization or committee to arrange for contributions to be made to another organization or committee in determining whether they are affiliated. MURs 1667, 1704, and 1722. The comment recommended that the proposed regulation be redrafted to clarify that affiliation may result when a sponsoring organization or a committee provides for the indirect financing of another organization or committee. The Commission agrees that some forms of indirect financing should be treated as evidence of affiliation. Accordingly, new paragraph (a)(3)(ii)(H) has been added to the regulations to take into account indirect methods of financing, such as where one entity regularly arranges for a committee to receive contributions from third parties.

New paragraph (a)(3)(ii)(I) has been added to permit consideration of whether a sponsoring organization or committee has an active or significant role in forming another committee or sponsoring organization. One comment suggested that the rule should also focus on the role played by the personnel of an organization or committee in determining whether one entity has a significant role in the formation of another. The commenter expressed the concern that individuals may establish several committees or organizations as "spin-offs" and yet contend that they are not affiliated. The commenter recommended redrafting this language to consider whether the members, officers, employees or agents of an entity had an active or leadership role in the formation of another sponsoring organization or committee. Consequently, the Commission has modified the wording of this provision to permit consideration of whether an agent of the sponsoring organization or committee had this type of role.

The NPRM had proposed deleting current paragraph (a)(1)(iii)(D), which concerns similar patterns of contributions. One comment urged the Commission to reinstate this provision because the commenter believed that public records of contributions provide objective evidence of affiliating conduct. The Commission has previously considered whether committees received their contributions from the same source or made contributions to the same candidates as an indicium of affiliation in several compliance matters and advisory opinions. The Commission had decided to delete this criterion from the proposed rules because political committees with similar political viewpoints and objectives may tend to make contributions to the same candidates and receive contributions from the same donors even though the committees are completely independent. The Commission has now determined that these concerns can be alleviated by retaining this factor and adding language in new paragraph (a)(3)(ii)(J) explaining that similar patterns of contributions and contributors are evidence of affiliation only when they indicate a formal or ongoing relationship between the sponsoring organizations or committees.

The Commission has evaluated the previously proposed revisions to section 110.3(a) in light of the subsequent decision in *Federal Election Commission* v. *Sailors' Union of the*

Pacific Political Fund, 828 F.2d 502 (9th Cir. 1987). The Commission has concluded that the unique circumstances present in that case do not necessitate any additional changes in the affiliation rules.

A question that has arisen in advisory opinions is whether affiliated committees, such as separate segregated funds of corporations, may disaffiliate at some point after their parent corporations have ceased to be commonly owned or controlled. *See* AOs 1987–21 and 1986–42. Although the entities involved in those advisory opinions had not reached the point of disaffiliation, the Commission recognizes that under the appropriate circumstances, disaffiliation might be possible. *See* AO 1983–28. The revised rules do not address this topic because the Commission has not had sufficient opportunities to examine particular situations in which corporations or other organizations seek to sever their connections with other corporate or noncorporate entities and to develop criteria for such determinations. However, nothing contained in the new affiliation regulations reverses or modifies the Commission's decisions on this subject.

There are several consequences resulting from a determination that committees are affiliated. First, affiliated committees share a common contribution limit with regard to all contributions they make or receive. If either of the affiliated committees is a multicandidate committee, the multicandidate committee's higher contribution limit applies to contributions made by either committee. Another consequence of affiliation is that there is no limit on the total amount of funds that may be transferred between the two committees under 11 CFR 102.6(a). However, transfers must be made only from funds which are permissible under the Act. Furthermore, new § 110.3(c)(5) and current § 110.8(d) contain certain restrictions on transfers between affiliated campaign committees of a dual candidate for federal offices or for federal and state offices. *See* discussion of new § 110.3(c)(5) below.

Under § 102.2, political committees are required to list on their Statements of Organization other political committees with which they are affiliated. Accordingly, § 102.2 has been amended to assist the reader in locating the affiliation provisions in the regulations. However, each affiliated committee that qualifies as a political committee under the FECA is responsible for satisfying its own recordkeeping and reporting obligations under 11 CFR parts 102 and 104. *See* AOs 1985–6, 1979–68 and 1979–56.

Finally, the Commission notes that determinations of affiliation will affect the ability of a corporation or federation of trade associations to solicit specific categories of individuals under 11 CFR 114.5(g) and 114.8(g). Specifically, the Commission has used the indicia of affiliation to decide whether particular entities, such as franchisees, licensees, wholesale distributors, partnerships and joint ventures are "affiliates" of corporations for solicitation purposes. *See* AOs 1989–8, 1988–46, 1987–34, 1985–31, 1985–7, 1984–36, 1983–48, 1983–46, 1979–38, 1978–61, 1978–39 and 1977–70. Accordingly, the Commission has included a cross-reference to the § 100.5(g) definition of "affiliated committee" in the portions of §§ 114.5 and 114.8 that refer to "affiliates." A similar reference has not been included, however in § 114.7, which addresses solicitations by membership organizations, cooperatives and corporations without capital stock, since the term "affiliate" is not used in § 114.7.

The NPRM observed that increasing numbers of candidates and prospective candidates are establishing political action committees (PACs) that make contributions to Federal, state and local candidates and conduct other political activities on instructions from or in conjunction with the founding candidates. Thus, the Commission sought comment on whether the indicia of affiliation in § 110.3(a) should continue to be applied to determine if such "candidate PACs" or "leadership committees" are affiliated with the candidates' authorized campaign committees. Questions were raised in AO 1978–12 concerning the status of a committee that expected to receive the assistance of a congressman in raising funds and making contribution decisions. The AO indicated that the committee was not considered an authorized committee if the congressman had not given it written authorization. On the basis of the facts presented, the Commission assumed the committee would not be affiliated with the congressman's principal campaign committee. The opinion did not, however, "give blanket approval for a general proposal" like the one described in the request. AO 1978–12. Thus, the Commission has acknowledged that under certain circumstances a candidate PAC or leadership committee may be considered affiliated with the candidate's campaign committee for the purposes of the contribution limitations. The Commission has relied upon the current indicia of affiliation in § 110.3 to determine whether particular authorized committees and candidate PACS were affiliated in MURs 2161, 1870, 1741, 950 and 459. Questions of this nature were also presented in AOs 1986–6 and 1985–40.

Two comments were received on this issue. One comment stated that a candidate PAC should be viewed as affiliated with the candidate's campaign committee and thus both committees should be subject to a single contribution limit. The other commenter submitted a draft provision that would implement a specific *per se* affiliation rule for a candidate's authorized committees or exploratory committees and any other committee established by the same candidate or significantly influenced by the candidate in its solicitation, contribution or expenditure activities.

Although the Commission considered including in the revised regulations language that would focus specifically on affiliation between authorized committees and candidate PACs or leadership committees, the Commission has decided instead to continue to rely on the factors set out at 11 CFR 110.3(a)(3)(ii). After evaluating the comments and testimony on this issue, as well as the situations presented in the previous advisory opinions and compliance matters, the Commission has concluded that this complex area is better addressed on a case-by-case basis. Thus, in an appropriate case, the Commission will examine the relationship between the authorized and unauthorized committees to determine whether they are commonly established, financed, maintained or controlled.

Section 110.3(b) Contribution Limitations for Political Party Committees.

Section 110.3(b) implements section 441a(a)(5)(B) of the Act by explaining how the FECA's antiproliferation provisions apply to different types of political party committees. Although § 110.3(b) has been reorganized, it does not change the current rules as to when separate contribution limits are available for particular types of party committees. New paragraph (b)(1) generally follows current paragraph (b)(1) by providing that the contribution limit that applies to the national committees of a political party is separate from the contribution limit for the state committees of the same political party. Please note that the separate contribution limits in new paragraph (b)(1) apply to contributions made or received by national and State party committees.

The revised regulations delete current paragraph (b)(3), which sets out examples involving contributions by national party committees, House campaign committees, state party committees and subordinate committees of State parties. It did not seem appropriate to include those examples in the regulations since examples are generally included in the Explanation and Justification. Thus, these examples are discussed below, and their deletion from the text of the regulations does not mean they have been invalidated.

New paragraph (b)(2) has been reorganzied to consolidate the provisions in current paragraphs (b)(2)(i) and (b)(4) explaining the contribution limits that apply to certain types of national party committees. Under the revised rules, the House campaign committee and the national committee of the same political party have separate per election limits on contributions they give to any federal candidate, including a candidate for the House of Representatives, the Senate or a candidate seeking the party's nomination for President. Similarly, the Senate campaign committee and the national committee of the same political party have separate per election limits on contributions to House candidates and candidates for President. However, with regard to contributions to Senate candidates, the Senate campaign committee and the national committee of the same party share a single $17,500 limit on contributions made at any time in the six year Senate election cycle. *See* 11 CFR 110.2(e). Finally, the Senate and House campaign committees have contribution limits which are separate from each other.

New paragraph (b)(3) follows current paragraph (b)(2)(ii) by explaining that contributions made by a State party committee and by subordinate State party committees are presumed to be made by a single committee. However, this provision also grants these party committees an opportunity to demonstrate that they qualify for an exemption from the affiliation rules, provided they can show thay have not received funds from any other party committee and that they do not make contributions in cooperation, consultation or concert with, or at the request or suggestion of, any other party unit or party committee.

In applying these rules, the Commission has encountered several questions including who has the burden of rebutting the presumption and what aspects of the relationship between a state party committee and a subordinate state party committee should be looked at to determine whether these committees are affiliated. Accordingly, the Commission sought comments on proposed language to clarify the application of the presumption in the current rules and to permit consideration of a wider range of interactions between a state party committee and subordinate state committees in determining whether they are entitled to separate contribution limits. The criteria proposed were based upon factors considered by the Commission in AO 1978–9.

Five comments were received on the proposed revisions to the rules governing the contribution limitations for state party committees and subordinate state party committees. The commenters opposing the proposed regulation argued that county committees and other local party units are independent of state party committees and are, therefore, entitled to separate contribution limits. However, according to these comments, county party units partly finance state party committees in some states, while in other states the county parties are financially supported by the state political party. One state party indicated that it has an agreement to provide office space at no cost to one of the county party units, in addition to providing the county party with financial support in a fixed amount per month. The comments and testimony illustrated and emphasized the complexity and greatly varying nature of relationshps between state party committees, county party committees, and other local party units.

One comment expressed the concern that the proposed change in terminology from "any party unit" to "the state party" in the draft rules could permit a subordinate party committee that received financing from or acted in consultation with party units other than the state committee, such as a national party committee, to claim that it operated independently and was entitled to a separate contribution limitation. This comment supported the approach taken in the current rules, which examines the contacts between the subordinate committee and any other party unit.

In light of the questions raised regarding the current rule and the proposed amendments, the Commission has reviewed the pertinent legislative history on this matter, as well as the 1976 rulemaking proceeding which culminated in the promulgation of the current rule. *See* FEC Agenda Document #87–79, at pp. 11–16 (July 22, 1987) (considered on Aug. 6, 1987). Finally, the Commission has examined various state laws and the bylaws of several state party committees to ascertain the general structure of state party organizations and to determine how state and local party committees interact with each other.

The Commission has decided not to adopt the approach urged by the commenters who favor treating state and local party committees as independent or *per se* unaffiliated because this approach would be in conflict with some of the evidence presented in this rulemaking and with the legislative history of the anti-proliferation provision of the Act. At this time the Commission has determined to retain the current language. Accordingly, in lieu of the language proposed in the July 30, 1986 NPRM, new § 110.3(b)(3) follows the language of current § 110.3(b)(2)(ii) by presuming that state party committees and subordinate state party committees are affiliated and by granting these committees the opportunity to demonstrate otherwise.

Section 110.3(c) Transfers

The rules pertaining to transfers of funds between political committees, including campaign committees and party committees, are currently set forth in paragraphs (a)(2) and (c) of § 110.3. The revised rules consolidate these provisions into a single paragraph (c) and resolve several significant points that have been raised regarding transfers. For example, new paragraph (c) clarifies the method used to determine whether the funds transferred between candidate committees contain any impermissible contributions. The cash on hand of the transferor is considered to consist of the funds most recently received, and the transferor must be able to demonstrate that it has sufficient permissible funds on hand at the time of the transfer. With regard to transfers from a federal candidate's previous campaign committee to his or her current campaign committee, new paragraph (c) explains when the transfer affects the original contributors' per election contribution limitations. The new rules also provide additional guidance as to when candidates are considered to be actively seeking more than one Federal office for purposes of the transfer rules. Finally, new paragraph (c) addresses transfers from a candidate's nonfederal campaign to the same candidate's Federal campaign committee. The Commission received no public comments on the proposed revisions to the transfer rules or on any

of the transfer issues raised in the NPRM.

The Commission has deleted from the revised transfer rules the current provision in § 110.3(a)(2)(ii) allowing transfers between a candidate's authorized committees in situations where the candidate has not received a waiver from reporting. This provision is not needed because candidates no longer have the option of reporting separately from their principal campaign committees. Moreover, transfers between authorized committees are covered by new paragraphs (c)(4) and (c)(5).

New paragraph (c)(1) follows current paragraph (c) by permitting unlimited transfers of funds between affiliated or unaffiliated party committees of the same political party. Language has also been added to paragraph (c)(1) to explicitly state that the contribution limitations of 11 CFR 110.1 and 110.2 do not restrict transfers between affiliated committees or by collecting agents to a separate segregated fund. This is consistent with 11 CFR 102.6(a)(1) regarding affiliated committees, and with 11 CFR 102.6(b) concerning collecting agents. Please note, however, that under 11 CFR 102.6(a)(1)(iv), only permissible funds may be transferred. Furthermore, such transfers can trigger the Act's registration and reporting requirements for previously unregistered entities. *See* 11 CFR 102.6(a)(2).

New paragraph (c)(2) generally follows current paragraph (a)(2)(i) regarding the transfer of joint fundraising proceeds. New language has been included to clarify that under the joint fundraising rules, a participating committee or organization may not receive more than its allocated share of the funds raised.

Paragraph (c)(3) generally follows current paragraph (a)(2)(iii) concerning transfers between a candidate's primary and general election campaigns.

New § 110.3(c)(4) continues the overall approach taken by current § 110.3(a)(2)(iv), which permits transfers in either direction between a current campaign committee and a previous campaign committee of the same candidate, so long as the funds do not contain contributions in violation of the Act. In addition, new language has been included to clarify that transfers of permissible funds between two previous campaign committees of the same candidate are also allowed under paragraph (c)(4). This provision has also been modified to clarify that it applies only to transfers between a candidate's Federal campaign committees. Transfers from a candidate's nonfederal campaign to the same candidate's Federal campaign committee are covered by new paragraph (c)(6), discussed below.

Definitions of "previous Federal campaign committee" and "current Federal campaign committee" have also been included in new paragraph (c)(4). These definitions are intended to distinguish transfers between previous and current campaign committees (which come within paragraph (c)(4)) from transfers between committees of dual Federal candidates (which are subject to somewhat different requirements, as set out in paragraph (c)(5)). The phrase "previous Federal campaign committee" refers to a campaign committee that supported a candidate in any federal election that has already been held. A "current Federal campaign committee" refers to the candidate's committee that is working for his or her nomination or election in an upcoming election.

The Commission has added new language to paragraph (c)(4) to assist committees in determining whether contributions to each committee from the same contributor must be aggregated upon transfer, and consequently whether the transfer would result in the making of excessive contributions. Under new paragraphs (c)(4) (iii) and (iv), aggregation of contributions is required if the transferred contributions were made after the previous election is over, or after the candidate withdrew from or became ineligible to participate in the previous election. However, post-election contributions need not be aggregated if they are properly designated for outstanding debts. Thus, the aggregation provisions effectuate the statutory scheme which establishes contribution limits on a per election basis. The new language is consistent with the approach taken in AOs 1987–4, 1986–12, 1980–30 and in revised 11 CFR 110.1(b) (1987).

Finally, the Commission notes that questions were raised in AO 1988–5 regarding transfers by a publicly funded Presidential campaign to a previously publicly funded campaign committee of the same candidate. The Commission held that this type of transfer from a publicly funded committee is not a qualified campaign expense under 11 CFR 9032.9(a). Therefore, the Commission concluded that such a transfer is not permissible until after the audit process is completed and any repayment obligations and any possible civil penalties are satisfied. The new regulations at 11 CFR 110.3(c)(4) do not directly address the issue of nonqualified campaign expenses presented in AO 1988–5. However, nothing contained in the new transfer provisions would reverse or modify the Commission's decision in that advisory opinion.

Paragraph (c)(5) of § 110.3 implements the statutory restrictions found in 2 U.S.C. 441a(a)(5) on transfers between principal campaign committees of a candidate who is seeking nomination or election to more than one Federal office. Although new paragraph (c)(5) generally follows current § 110.3(a)(2)(v), new language has been included to provide further guidance on certain points. First, the revised rules clarify when a candidate is deemed to be seeking more than one Federal office, and is thus subject to the "dual candidate" transfer rules of paragraph (c)(5). An individual is considered to be seeking more than one Federal office if the individual is concurrently a candidate for more than one Federal office during the same or overlapping election cycles.

New paragraph (c)(5)(i) follows the current regulations and 2 U.S.C. 441a(a)(5)(C) by prohibiting transfers until the candidate is no longer "actively seeking" more than one Federal office. The revised rules continue to list the situations where the candidate will no longer be considered to be actively seeking a particular office—when the principal campaign committee has filed a termination report or has notified the Commission that no further campaign activities will be conducted except for expenditures for debt retirement purposes. The NPRM suggested including other situations where candidates are prohibited from running for more than one office by operation of state law. Along these lines, the Commission has now added two new examples to paragraph (c)(5)(i): Where the candidate is ineligible for nomination or election to more than one office by operation of law, such as when the state filing deadline has passed, and where the individual publicly withdraws from the race and ceases to campaign. The first of these follows the Commission's decision in AO 1986–12.

New paragraph (c)(5)(ii) follows the current rules and section 441a(a)(5)(C) of the Act by requiring aggregation of a donor's contributions to each committee to the extent that such contributions are transferred between committees. Contributions must be excluded from the total amount transferred to the extent that they would exceed the donor's contribution limits with respect to the committee receiving the transferred funds.

Paragraph (c)(5)(iii) prohibits transfers where the dual federal candidate's committee "has elected to receive" public funding under title 26. This provision more closely conforms to the

language in section 441a(a)(5)(C) of the Act than the wording of the current provision. The revision clarifies that the application of this provision does not depend upon the timing of the receipt of title 26 funding.

The Notice raised the question of what is meant by "more than one Federal office," noting the Commission's decisions in AOs 1982–22 and 1978–19. The Commission concluded in AO 1982–22 that a candidate is not running for two offices if the candidate switches Congressional districts in response to a court reapportionment plan. However, in AO 1978–19, the Commission decided that a candidate is running for two Federal offices if he or she enters races for two different Senate seats which span different terms. Specific language addressing these situations has not been included in the amended rules because they do not occur with sufficient frequency to warrant mention; however, these opinions still serve as precedent.

Another issue addressed in the NPRM concerned transfers between the campaign committees of a candidate who abandons his or her campaign for a second Federal office and reactivates the previous campaign for the first office, where both general elections are to be held on the same day. *See* AO 1984–38. In such a situation the Commission determined that if a contribution to the first campaign committee is transferred to the second campaign committee, it must be counted against the contribution limits for the second office. However, the contribution is still attributed to the contribution limits for the first office as well, unless the donor provides a written redesignation. The Commission has decided that this is another area in which specific regulatory language is not needed because this type of situation occurs infrequently.

The Commission has considered whether the restrictions on transfers between committees of dual candidates should also apply to situations where an individual is concurrently a candidate for one office and testing the waters for another office. Although the Commission is unable at this time to reach a conclusion on this issue, the Commission has determined that even if such transfers were permissible, contributions received by the campaign committee and contributions received by the exploratory committee from the same contributor would have to be aggregated for purposes of the contribution limitations of the FECA whenever such contributions are transferred.

Finally, the Commission notes that additional guidance concerning the operation of dual Federal campaign committees may be found at 11 CFR 110.8(d).

Paragraph (c)(6) sets forth new regulatory language concerning transfers of funds from a candidate's nonfederal campaign organization to his or her federal campaign committee. This paragraph generally follows the regulations concerning transfers between previous and current federal committees in § 110.3(c)(4) as well as the previous advisory opinions in this area. *See* AOs 1987–12, 1985–2, 1984–46, 1983–34 and 1982–52. Please note that if the candidate is conducting dual campaigns for state and Federal offices, the provisions of § 110.8(d) would be applicable instead of new § 110.3(c)(6).

Under new paragraph (c)(6), previous nonfederal committees may transfer funds to current federal committees, and current nonfederal committees may make transfers to previous federal committees. Although the total amount that may be transferred between the two affiliated committees is unlimited, the funds actually transferred must not include any contributions from prohibited sources or any contributions in excess of the contribution limits. To assure this, paragraph (c)(6)(i) states that the committee transferring the funds must be able to demonstrate that it has sufficient funds on hand at the time of the transfer that comply with the FECA's contribution limitations and prohibitions. This is consistent with the Commission's current approach in compliance matters. New paragraph (c)(6)(i) also requires the transferor committee to keep records of the sources of funds and to make these records available to the Commission upon request. This is consistent with the recordkeeping requirements for reporting committees.

Paragraph (c)(6)(ii) addresses the question of when contributions to the nonfederal and federal committees must be aggregated for purposes of the contribution limits of the Act. In determining whether contributions are excessive, the amount contributed by a particular person to the nonfederal committee must be aggregated with any contributions made by that person to the federal committee if the contributions were made after the state or local election was held, or after the candidate withdrew from the state or local election, or after the candidate publicly announces his or her candidacy for the Federal office. However, contributions included in the transferred amount that were made prior to the state or local election and while the candidate was still in the nonfederal race do not have to be aggregated with subsequent contributions to the federal campaign committee. AO 1987–12. These requirements effectuate the per election contribution limits of the FECA.

Consistent with previous Commission determinations, the new rules require nonfederal to federal transfers to count toward the threshold for political committee status under the Act. *See e.g.* AOs 1987–12, 1985–2 and 1984–46. Thus, under paragraph (c)(6)(iii), the nonfederal campaign committee must register and report if the amount transferred exceeds $1000. A statement of organization must be filed no later than ten days after the transfer occurs. The nonfederal committee's first report must disclose cash on hand, the source(s) of such funds, and the amount transferred to the federal committee. This information is required under current 11 CFR 104.12. As noted above, the amount transferred is composed of the funds most recently received, excluding any amounts that are not permissible under the FECA. The committee must itemize the sources of the funds transferred in a memo Schedule A in accordance with current 11 CFR 104.3(a)(4). Finally, the new rules allow the nonfederal committee's first report to serve as its termination report, if appropriate. During this rulemaking, the Commission explored alternatives that would have excluded nonfederal committees transferring over $1000 from the FECA's registration and reporting obligations. However, the Commission was not able to find an alternative given that the Commission no longer has the authority to grant waivers from the reporting requirements of the Act.

New paragraph (c)(7) has been added to the regulations to alert the reader that current § 110.8(d) contains additional provisions concerning concurrent campaigns for Fedeal office or for Federal and nonfederal office, including the requirement to maintain completely separate campaign organizations. The Commission may decide at a later time to initiate a rulemaking to move paragraph (d) of § 110.8 to a more appropriate place in the regulations.

Section 110.4 Prohibited Contributions (2 U.S.C. 441e, 441f, 441g, 432(c)(2))

This section implements sections 441e and 441f of the FECA by prohibiting contributions from foreign nationals in connection with any election for local, State or Federal public office, and by prohibiting contributions in the name of another. Section 110.4 also sets out restrictions on contributions of currency, in accordance with sections 441g and 432(c)(2) of the Act. The Commission

received no public comments on this section.

Paragraph (a) of § 110.4 contains no substantive changes regarding foreign nationals.

The rules pertaining to contributions in the name of another follow the current provisions, except that new paragraph (b)(1)(iii) has been added to specifically prohibit any person from knowingly helping or assisting any other person in making a contribution in the name of another. Former paragraph (b)(1)(iii) has been renumbered as paragraph (b)(1)(iv). The new language is consistent with a recent judicial interpretation of 2 U.S.C. 441f in *FEC* v. *Rodriguez*, No. 86–687 Civ–T–10(B) (M.D. Fla. May 5, 1987) (unpublished order denying motion for summary judgment). New paragraph (b)(1)(iii) applies to those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another, including those who solicit or act as go-betweens to third parties whose donations are reimbursed by the individual who performs a purely ministerial act without any knowledge of the scheme, such as someone who routinely reviews or approves all checks drawn on a specific account.

New paragraph (c) follows the language of current paragraph (c) regarding the making and receipt of cash contributions.

Section 110.5 Annual Contribution Limitation for Individuals (2 U.S.C. 441a(a)(3))

New section 110.5 generally follows current § 110.5 by implementing the $25,000 limitation on contributions made by individuals in a calendar year. The new provision contains several minor clarifying revisions to the current rules. First, the title of this section has been amended to emphasize that the $25,000 annual limitation applies only to contributions made by individuals. Next, new paragraph (a), designated "Scope," has been added to clarify that this section only applies to individuals permitted to make contributions under the Act and does not apply, for example, to foreign nationals or federal contractors. Accordingly, previous paragraphs (a) through (d) have been renumbered (b) through (e).

The wording of new § 110.5(b) has been slightly changed from current § 110.5(a) to clarify that the $25,000 contribution limit applies to all contributions made in the same calendar year. This provision has also been modified somewhat from the proposed rules because the language of the proposed rules could have been misinterpreted to mean that the annual limit does not apply to contributions to delegates or contributions to persons making independent expenditures. The revised language clarifies that these types of contributions are subject to the $25,000 annual limit. The Commission also notes that contributions to a "testing the waters" account under § 101.3 are subject to the annual contribution limit in the event that the individual receiving the contributions subsequently becomes a candidate. The $25,000 annual limit also applies to contributions to an account set up under 11 CFR 9003.3, including a legal and accounting compliance fund.

Paragraph 110.5(c), which is based upon current paragraph 110.5(b), explains when contributions made in a nonelection year are treated as made in an election year for purposes of the annual contribution limit. A definition of the term "nonelection year" has been included to avoid repetition of the phrase "in a year other than the calendar year in which an election is held."

Paragraphs (d) and (e) generally follow current paragraphs (c) and (d), respectively, by providing that the $25,000 limit applies to contributions to persons (including political committees) making independent expenditures and to contributions to delegates and delegate committees. None of the public comments addressed the possible changes to § 110.5 put forth by the Commission.

Section 110.6 Earmarked Contributions (2 U.S.C. 441a(a)(8))

Section 110.6 of the regulations implements 2 U.S.C. 441a(a)(8), which requires that all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, must be treated as contributions from that person to the candidate. Under section 441a(a)(8) of the FECA and § 110.6 of the Commission's regulations, conduits and intermediaries must report the original source of the earmarked contribution, as well as the intended recipient, to the Commission and to the intended recipient. Section 110.6 also provides that contributions over which the conduit exercises direction or control are treated as contributions from both the original contributor and the conduit, and are reportable as such. This provision is based on the legislative history of the 1974 amendments to the FECA.

The title of § 110.6 has been amended to include a reference to section 441a(a)(8) of the FECA. The current title incorrectly refers to section 441a(a)(7)(A) of the Act.

The Commission received three comments, and heard testimony from one of those commenters, regarding proposed revisions to the earmarking regulations. Two of these comments addressed questions concerning the permissibility of separate segregated funds acting as conduits, while the comments and testimony of the third commenter concerned the direction or control provisions.

Section 110.6(a) General

New § 110.6(a) follows current § 110.6(a) by treating contributions transmitted through a conduit to a candidate as subject to the original contributors' limits on contributions to that candidate.

The Notice of Proposed Rulemaking raised the question of whether the requirements set out in § 110.6 should apply to contributions earmarked to a political committee that is not an authorized committee of any candidate, such as a political action committee. The Commission noted that the statutory provision on which § 110.6 is based only refers to contributions earmarked or otherwise directed to a particular candidate. None of the public comments addressed this question.

The Commission has decided that § 110.6 should continue to be limited to contributions earmarked to candidates and their authorized committees, and thus should not be extended to include contributions earmarked to other types of political committees. However, as indicated in AOs 1983–18 and 1981–57, conduits would not be barred from forwarding earmarked contributions to unauthorized committees so long as they comply with the time limits for forwarding the contributions, as prescribed by 11 CFR 102.8. In such situations, unauthorized committees are required to report the amount received as a contribution from the original contributor pursuant to 11 CFR 104.3(a)(4).

Section 110.6(b) Definitions

The definition of "earmarked" in § 110.6(b)(1) follows the definition set forth in current § 110.6(b).

New paragraph (b)(2) has been added to provide a definition of the phrase "conduit or intermediary." The Commission has decided that providing a definition would be more useful than the previously proposed approach of simply setting forth factors or criteria for deciding who is a conduit. Additional guidance is needed because the question

of whether a particular individual is acting as a conduit has been raised in several contexts, including compliance matters such as MUR 1690. Neither the provisions of the FECA, nor its legislative history, indicates what was intended by the term "conduit or intermediary."

The new definition of "conduit or intermediary" in paragraph (b)(2) encompasses all those who receive and forward contributions earmarked to a candidate or authorized committee, with certain exceptions discussed below. Please note that this definition does not distinguish between the term "conduit" and the term "intermediary." The Commission considers these terms to be synonymous.

The new rules recognize that certain persons are not properly considered conduits and are consequently not subject to the requirements of § 110.6. First, individuals who are employees or full-time volunteers for a campaign, or who are expressly authorized to engage in fundraising on behalf of the campaign and occupy significant positions in the campaign organization, would be viewed as agents of the campaign rather than conduits so long as they do not act on behalf of an entity prohibited from making contributions, such as a corporation. The Commission notes that in determining whether an individual is acting as an agent of the candidate's campaign or as an agent of another entity, one consideration would be whether the individual incurred any solicitation expenses, and if so, whether reimbursement was provided by the campaign committee or by any other entity.

Other exceptions from the definition of conduit include affiliated committees, fundraising representatives conducting joint fundraising with the candidate's campaign committee, and commercial fundraising firms retained by the campaign. Fundraising representatives have been excluded because their activities are already covered by the joint fundraising regulations at 11 CFR 102.17 and 9034.8. In addition, the activities of affiliated committees receiving earmarked contributions are governed by the affiliation rules in 11 CFR 110.3. Commercial fundraising firms hired by the candidate's authorized committee are considered agents of the committee rather than conduits.

The new definition of conduit also explicity provides that persons who are prohibited from making contributions or expenditures in connection with Federal elections are also prohibited from serving as conduits for contributions earmarked to candidates or their campaign committees. Thus, corporations, labor organizations, government contractors and foreign nationals are not permitted to be conduits. This is consistent with AO 1986–4. However, this provision does not limit the ability of an organization or a committee, other than a foreign national, to function as a collecting agent for a related separate segregated fund under 11 CFR 102.6.

The Notice of Proposed Rulemaking also sought comments on whether to continue to permit separate segregated funds (SSFs) to serve as conduits for earmarked contributions. In three previous advisory opinions the Commission has permitted such activity. AOs 1986–4; 1981–21; and re: AOR 1976–92. However, the House Report accompanying the 1974 amendments to the Act states that the earmarking provisions "are not intended to apply to contributions from separate segregated funds maintained by corporations or labor organizations because donors to such funds must relinquish control of their donation to the corporation or labor organization and such donors may not earmark or direct such donations to any specific candidate or political committee." H.R. Rep. No. 93–1239, 93d Cong., 2d Sess. 15 (1974). This statement is repeated in the Conference Report. H.R. Conf. Rep. No. 93–1438, 93d Cong., 2d Sess. 51 (1974). Hence, the NPRM proposed three alternative approaches: (1) Explicitly prohibit earmarking through SSFs; (2) Permit SSFs to receive and forward earmarked contributions but clarify that the contributions must not exceed the amount that the original contributor may donate directly to the candidate; (3) Permit SSFs to receive and forward earmarked contributions but specifically prohibit the corporation or labor organization from exercising direction or control over the choice of the recipient candidate.

Two comments from SSFs addressed these concerns. One favored alternative 2, allowing earmarked contributions through SSFs if they are limited to what the individual could lawfully contribute directly to the candidate. The other comment supported the current approach of permitting earmarking through SSFs and stated that nothing would be added by the adoption of either alternative 2 or 3 because those restrictions are already located in other portions of the regulations. This commenter felt that the present system promotes support for a wider range of candidates and political views.

Under new paragraph (b)(2), SSFs may continue to act as conduits or intermediaries for earmarked contributions. However, these earmarked contributions must not exceed the contribution limits that apply to the original contributor's donations to the candidate under section 441a of the Act. This practice is also consistent with § 114.3(c)(2), which allows candidates and party representatives to address an organization's restricted class and to ask that contributions to the organization's SSF be designated for the candidate's campaign or party. SSFs acting as conduits will continue to be required to report their conduit activities pursuant to section 110.65 (c) or (d). *See* AO 1981–21 and re: AOR 1976–92. Furthermore, if a SSF incurs expenses in soliciting contributions on behalf of particular candidates, those solicitation expenses should be reported as in-kind contributions or as independent expenditures by the SSF to the candidate, depending on the circumstances. Finally, the Commission had decided that where the circumstances demonstrate that the SSF exercises direction or control over earmarked contributions, the SSF must treat those contributions as contributions from both the original contributor and the SSF. This is consistent with the Commission's decisions in AO 1986–4 and re: AOR 1976–92.

As discussed above, under the new definition of "conduit or intermediary" a corporation or labor organization may not itself act as a conduit. This represents a continuation of the Commission's previous approach regarding the permissible scope of activities undertaken by a corporation of labor organization not acting through a SSF. Within the confines of 11 CFR 114.3, the corporation or labor organization may encourage those in its solicitable class to contribute to particular candidates or political committees. *See* Explanation and Justification for § 114.3, H.R. Doc. No. 95–44, 95th Cong., 1st Sess. 104 (1977). However, in AOs 1987–29, 1986–4 and 1982–2 the Commission has stated that corporations are not permitted to act as conduits or intermediaries or facilitate the making of contributions. If a corporation establishes an employee participation plan pursuant to 11 CFR 114.11, only the custodian of the accounts, and not the corporation, may forward employee contributions that have accumulated in the accounts. The Explanation and Justification for section 114.11 explains that corporations and labor organizations are also forbidden to exercise any direction or control over employee contributions to such plans because this would result in illegal corporate expenditures. H.R. Doc. No.

95–44, 95th Cong., 1st Sess. 116, 117 (1977).

The new definition of "conduit or intermediary" also recognizes that those who serve as conduits or intermediaries are required to forward earmarked contributions to the intended recipient candidate committees within the time periods prescribed by 11 CFR 102.8. However, anyone who is prohibited from being a conduit, but nevertheless receives earmarked contributions, must return them to the contributor rather than forwarding them.

Section 110.6(c) Reporting of Earmarked Contributions

The Commission notes that sometimes contributions must be reported by several entities under different provisions of the Act. The principal reporting provision is 2 U.S.C. 434, which requires political committees, including committees authorized by candidates, to report their receipts and disbursements to the Commission. Section 441a(a)(8) of the Act requires conduits and intermediaries to report the source and intended recipient of earmarked contributions to the Commission and to the intended recipient. Section 432(b) of the FECA is also, in some respects, a reporting provision as it requires persons receiving contributions for authorized and unauthorized political committees to forward certain information together with the contribution to the committee's treasurer, but not to the Commission. Through its regulations at part 104, § 102.8 and § 110.6, the Commission has set forth a reporting and recordkeeping system which takes into account the overlapping requirements of these statutory provisions.

The Commission has revised and reorganized the provisions of § 110.6(c) regarding the reporting of earmarked contributions. Paragraph 110.6(c)(1) consolidates the conduit reporting provisions in current paragraphs (c)(1), (c)(2), (c)(4), and (c)(5). Paragraph 110.6(c)(2) sets forth reporting requirements for recipient candidates and their authorized committees based on present paragraph (c)(3).

Paragraph (c)(1) generally follows the provisions of current paragraph (c)(1). However, the new rules specify that information on earmarked contributions should be included in the conduit's report for the reporting period in which such contributions were received, rather than simply stating that the information should be included in the conduit's "next due" report.

Section 110.6(c)(1) continues the current requirement that conduits not otherwise subject to the reporting requirements of 11 CFR part 104 must still report earmarked contributions to the Commission by letter. However, this paragraph has been amended to state that the letter is due thirty days after forwarding the earmarked contribution. The current rules do not specify a due date for the letter. Two alternatives were discussed in the NPRM—either requiring the letter to be filed within 30 days after receiving the earmarked contribution or within the time frames set out in § 104.5(c) for filing reports. The Commission concluded that it would be simplest to require reporting within thirty days after forwarding the earmarked contribution.

Revised paragraph (c)(1) also requires conduits to use memo entries to report contributions passed on by means of the contributor's check. The current regulations do not specify that memo entries be used.

New paragraph (c)(1) also incorporates paragraph (c)(2) of the current regulations by providing that the information pertaining to earmarked contributions shall be supplied to the candidate at the same time that the contribution itself is passed on to the intended recipient. For clarity, this paragraph contains a cross-reference to the ten-day forwarding requirement of 11 CFR 102.8(a).

In addition, revised paragraph (c)(1) follows present paragraph (c)(4) regarding the information that the conduit must report. Accordingly, the conduit must report the name and address of the contributor, the amount of the contribution, the date the conduit received it, the intended recipient's name, the date the contribution was forwarded and whether it was forwarded in cash, by the contributor's check or by the conduit's check. For contributions exceeding $200, the report must also include the contributor's occupation and the name of his or her employer.

Finally, the new conduit reporting rules delete the previous exception to the reporting requirements found in current paragraph (c)(5) for "occasional, isolated, or incidental physical transfers of checks or other written instruments payable to a candidate or his or her authorized committee" aggregating $1,000 or less per candidate per year. That exception was created when the Commission had authority to grant waivers to the Act's reporting obligations. As the Commission no longer has waiver authority, it is necessary to delete the exception.

New § 110.6(c)(2) requires candidates and their authorized committees to report the receipt of earmarked contributions. In contrast, the present rules state that all intended recipients must report earmarked contributions. The Commission has decided to restrict the reporting obligation to intended recipients that are candidates or authorized committees because 2 U.S.C. 441a(a)(8) refers to contributions earmarked to a particular candidate, but does not mention contributions earmarked to other recipients, such as political action committees.

Revised paragraph (c)(2) amends the reporting requirements for candidates and authorized committees in several other respects. The revisions clarify the reporting obligations that apply if the candidate or committee receives one or more earmarked contributions from a conduit which in the aggregate exceed $200 in a calendar year. The recipient candidate or committee is required to itemize the identification of the conduit, the total amount received from the conduit and the date of receipt. If contributions from a contributor aggregate over $200 in any calendar year, the candidate or committee is also required to itemize the identification of the contributor, the amount, and the date of receipt. For earmarked contributions aggregating $200 or less, the reporting requirements in 11 CFR part 104 continue to apply.

No public comments were received regarding the amendments to the reporting provisions in 11 CFR 110.6(c)(1) and (2).

Section 110.6(d) Direction or Control

The new regulations do not change the longstanding requirement that for purposes of a conduit's contribution limits, a contribution is treated as made by the conduit if the conduit exercises any direction or control over the choice of the recipient candidate. This rule is based on the House Report accompanying the 1974 amendments to the Act. It states that "if a person exercises any direct or indirect control over the making of a contribution, then such contribution shall count toward the limitation imposed with respect to such person under [current 2 U.S.C. 441a], but it will not count toward such a person's contribution limitation when it is demonstrated that such person exercised no direct or indirect control over the making of the contribution involved." H.R. Rep. No. 93–1239, 93d Cong., 2d Sess. 16 (1974). The Conference Report repeats this language and states that the Conference substitute is the same as the House amendment with certain exceptions not relevant here. H.R. Rep. No. 93–1438, 93d Cong., 2d Sess. 51, 52 (1974).

In the course of this rulemaking the Commission considered changing the terminology in § 110.6(d) to refer to "direct or indirect control over the making of an earmarked contribution" to more closely conform to the language set out in the Congressional reports discussed above. However, the Commission has now decided to retain the phrase "direction or control" used in the current regulation because this wording has become a commonly recognized term. The Commission also notes that a change in the wording could create the mistaken assumption that the Commission has changed the standard used to determine when the contribution counts against the conduit's contribution limits in addition to counting against the original contributor's limits. The Commission intends to maintain the current approach regarding the circumstances under which the direction or control rule applies.

The Commission also considered whether it would be advisable to provide criteria or examples or a definition of direction or control. The legislative history provides no guidance as to when this rule should apply. In the past, the Commission has considered such factors as whether the conduit controlled the amount and timing of the contribution, and whether the conduit selected the intended recipient. *See* MUR 1028, AO 1986–4 and re: AOR 1976–92. The Commission has also distinguished a "suggestion" to make a contribution from actual direction or control over the contribution. AO 1980–46.

In response to the questions raised in the NPRM, one organization submitted a written comment and testimony urging the Commission to revise this provision to prevent certain situations from occurring. The commenter pointed out that in recent years several political committees have collected sizeable numbers of checks made out to particular candidates, "bundled" them together and turned them over to the candidates. The commenter argued that bundling substantially undermines one purpose of the Act, which is to limit the actuality or appearance of corruption resulting from large individual financial contributions. *See Buckley* v. *Valeo*, 424 U.S. 1, 26–27 (1976). For this reason, the commenter urged the Commission to revise § 110.6(d) to provide that the conduit exercises direction or control if the conduit actively solicits others to contribute and then turns the funds over to the candidate in such a way that the candidate is aware of the conduit's role.

The Commission has carefully considered this comment, as well as several different versions of possible regulatory language. In light of the wide variety of earmarking situations which have arisen in the past, the Commission is not able at this time to formulate regulatory language that clearly delineates situations where direction or control exists from those in which the conduit does not exercise direction or control. Accordingly, the Commission will continue to evaluate these situations on a case-by-case basis. However, further guidance on this can be found in AOs 1987–29, 1986–4, 1980–46 and re: AOR 1976–92 as well as MURs 1028 and 2282.

Finally, the Commission has made several revisions to § 110.6(d)(2) to clarify the reporting of contributions when the conduit exercises direction or control. The conduit's reports to the Commission and to the recipient should indicate that the contribution is made by both the orginal contributor and the conduit, and that the entire amount is attributed to each of them. The recipient candidate or authorized committee should also report the dual attribution of the contribution.

Conforming Amendments

In addition to the foregoing revisions to 11 CFR 110.3, 110.4, 110.5, and 110.6, several amendments have been made to other sections of the Commission's regulations for clarification and to make those sections consistent with the revised language in 11 CFR 110.3 through 110.6. The conforming amendments are located in 11 CFR 100.5(g), 102.2(b), 110.1(f), 110.8(d), 114.5(g), 114.8(g), and 9034.4(d). The Commission received no public comments on these changes.

Section 100.5 Political Committee (2 U.S.C. 431 (4), (5), (6))

The definition of "affiliated committee" in § 100.5(g) has been revised to follow the language of new § 100.3(a).

Section 102.2 Statement of Organization: Forms and Committee Identification Number (2 U.S.C. 433 (b), (c))

The Commission has made two conforming amendments to the rules concerning Statements of Organization filed by political committees. First, Cross-references to § 110.3(a), 110.3(b), 110.14(j), and 110.14(k) have been added to assist political committees filing Statements of Organization in locating the applicable provisions concerning affiliation with other political committees, including political party committees and delegate committees. Secondly, the revisions clarify that Statement of Organization must disclose situations where an unauthorized committee and a principal campaign committee are affiliated.

Section 100.1 Contributions by Persons Other Than Multicandidate Political Committees (2 U.S.C. 441a(a)(1))

There are no substantive changes in this section. However, in paragraph (f)(3), the cross-reference to current § 110.3(a)(2)(iv) has been revised to refer to new § 110.3(c)(4).

Section 110.8 Presidential Candidate Expenditure Limitations

There are not substantive changes in this section. However, in paragraph (d)(2), regarding transfers between committees of dual candidates, the cross-reference to current § 110.3(a)(2)(iv) has been revised and corrected to refer to new § 110.3(c)(5). The cross-reference had incorrectly referred to the provision on transfers between previous and current campaign committees rather than the provision concerning transfers between committees of candidates concurrently running for more than one office.

Section 114.5 Separate Segregated Funds

A new sentence has been added to paragraph (g)(1) of § 114.5 to clarify that for solicitation purposes, the affiliation factors found in § 100.5(g)(4) shall be used to determine whether an organization is an affiliate of a corporation. The new sentence is consistent with AOs 1985–31 and 1983–48, and thus does not represent a substantive change.

Section 114.8 Trade Associations

A new sentence has been added to paragraph (g)(1) of § 114.8 to clarify that for solicitation purposes, the affiliation factors found in § 100.5(g)(4) shall be used to determine whether an entity is an affiliate of a federation of trade associations. This new sentence follows the new language added to § 114.5(g) and does not represent a substantive change.

Section 9034.4 Use of Contributions and Matching Payments

Section 9034.4(d), which governs transfers of funds by candidates receiving federal matching funds, has been amended in three respects. First, new language has been added to paragraph (d) to clarify the relationship between this provision and the transfer rules at new 11 CFR 110.3(c)(5) applicable to dual Federal candidates. Next, the cross-reference to current § 110.3(a)(2)(v) has been changed to

revised § 110.3(c)(5), and a new cross-reference to § 110.8(d) has been added to assist the reader in locating additional provisions pertaining to transfers. Finally, § 9034.4(d) has been reworded to clarify that the statutory requirements set forth in this paragraph apply to all candidates who have elected to receive matching funds, and are not limited to those who have already received matching funds.

List of Subjects

11 CFR Part 100

Elections, Political committees and parties.

11 CFR Part 102

Political committees and parties, Reporting requirements.

11 CFR Part 110

Aliens, Campaign funds, Political candidates, Political committees and parties.

11 CFR Part 114

Business and industry, Elections.

11 CFR Part 9034

Campaign funds, Elections, Political candidates.

For the reasons set out in the preamble, subchapters A and F, chapter I, title 11 of the Code of Federal Regulations are amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR part 100 is amended by revising § 100.5(g) to read as follows:

§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

* * * * *

(g) *Affiliated committee.* (1) All authorized committees of the same candidate for the same election to Federal office are affiliated. (2) All committees (including a separate segregated fund, *see* 11 CFR part 114) established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. "Local unit" may include, in appropriate cases, a franchisee, licensee, or State or regional association. (3) Affiliated committees sharing a single contribution limitation under paragraph (g)(2) of this section include all of the committees established, financed, maintained or controlled by—

(i) A single corporation and/or its subsidiaries;

(ii) A single national or international union and/or its local unions or other subordinate organizations;

(iii) An organization of national or international unions and/or all its State and local central bodies;

(iv) A membership organization, (other than political party committees, *see* 11 CFR 110.3(b)) including trade or professional associations, *see* 11 CFR 114.8(a), and/or related State and local entities of that organization or group; or

(v) The same person or group of persons.

(4)(i) The Commission may examine the relationship between organizations that sponsor committees, between the committees themselves, or between one sponsoring organization and a committee established by another organization to determine whether committees are affiliated.

(ii) In determining whether committees not described in paragraphs (g)(3) (i)–(iv) of this section are affiliated, the Commission will consider the circumstantial factors described in paragraphs (g)(4)(ii) (A) through (J) of this section. The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization. Such factors include, but are not limited to:

(A) Whether a sponsoring organization owns controlling interest in the voting stock or securities of the sponsoring organization of another committee;

(B) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(C) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee;

(D) Whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(E) Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(F) Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;

(G) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(H) Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(I) Whether a sponsoring organization or committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; and

(J) Whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the sponsoring organizations or committees.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

3. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

4. Section 102.2 is amended by revising paragraphs (b)(1) introductory text and (b)(1)(i) to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

* * * * *

(b) * * *

(1) "Affiliated committee" includes any committee defined in 11 CFR 100.5(g), 110.3(a) or (b), or 110.14(j) or (k).

(i) A principal campaign committee is required to disclose the names and addresses of all other authorized committees which have been authorized by its candidate, and all other unauthorized committees that are affiliated with the principal campaign committee. Authorized committees, and unauthorized committees that are affiliated, need only disclose the name of their principal campaign committee.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

5. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441i.

6. Section 110.1 is amended by revising paragraph (f)(3) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(f) * * *

(3) No principal campaign committee or other authorized political committee of that candidate for one election for one Federal office transfers funds to, loans funds to, makes contributions to, or makes expenditures on behalf of another principal campaign committee or other authorized political committee of that candidate for another election for another Federal office, except as provided in 11 CFR 110.2(c)(4).

* * * * *

7. Section 110.3 is revised to read as follows:

§ 110.3 Contribution limitations for affiliated committees and political party committees; Transfer (2 U.S.C. 441a(a)(5), 441a(a)(4)).

(a) *Contribution limitations for affiliated committees.* (1) For the purposes of the contribution limitations of 11 CFR 110.1 and 110.2, all contributions made or received by more than one affiliated committee, regardless of whether they are political committees under 11 CFR 100.5, shall be considered to be made or received by a single political committee. *See* 11 CFR 100.5(g). Application of this paragraph means that all contributions made or received by the following committees shall be considered to be made or received by a single political committee—

(i) Authorized committees of the same candidate for the same election to Federal office; or

(ii) Committees (including a separate segregated fund, *see* 11 CFR part 114) established, financed, maintained or controlled by the same corporation, labor organization, person or group of persons, including any parent, subsidiary, branch, division, department or local unit thereof. For the purposes of this section, "local unit" may include, in appropriate cases, a franchisee, licensee, or State or regional association.

(2) Affiliated committees sharing a single contribution limitation under paragraph (a)(1)(ii) of this section include all of the committees established, financed, maintained or controlled by—

(i) A single corporation and/or its subsidiaries;

(ii) A single national or international union and/or its local unions or other subordinate organizations;

(iii) An organization of national or international unions and/or all its State and local central bodies;

(iv) A membership organization, (other than political party committees, *see* paragraph (b) of this section) including trade or professional associations, *see* 11 CFR 114.8(a), and/or related State and local entities of that organization or group; or

(v) The same person or group of persons.

(3)(i) The Commission may examine the relationship between organizations that sponsor committees, between the committees themselves, or between one sponsoring organization and a committee established by another organization to determine whether committees are affiliated.

(ii) In determining whether committees not described in paragraphs (a)(2) (i)–(iv) of this section are affiliated, the Commission will consider the circumstantial factors described in paragraphs (a)(3)(ii) (A) through (J) of this section. The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization. Such factors include, but are not limited to:

(A) Whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee;

(B) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(C) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee;

(D) Whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(E) Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(F) Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;

(G) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(H) Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17;

(I) Whether a sponsoring organization or a committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; and

(J) Whether the sponsoring organizations or committees have

similar patterns of contributions or contributors which indicates a formal or ongoing relationshp between the sponsoring organizations or committees.

(b) *Contribution limitations for political party committees.* (1) For the purposes of the contribution limitations of 11 CFR 110.1 and 110.2, all contributions made or received by the following political committees shall be considered to be made or received by separate political committees—

(i) The national committee of a political party and any political committees established, financed, maintained, or controlled by the same national committee; and

(ii) The State committee of the same political party.

(2) Application of paragraph (b)(1)(i) of this section means that—

(i) The House campaign committee and the national committee of a political party shall have separate limitations on contributions under 11 CFR 110.1 and 110.2.

(ii) The Senate campaign committee and the national committee of a political party shall have separate limitations on contributions, except that contributions to a senatorial candidate made by the Senate campaign committee and the national committee of a political party are subject to a single contribution limitation under 11 CFR 110.2(e).

(3) All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee. This presumption shall not apply if—

(i) The political committee of the party unit in question has not received funds from any other political committee established, financed, maintained, or controlled by any party unit; and

(ii) The political committee of the party unit in question does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party unit.

(c) *Transfers.* The contribution limitations of 11 CFR 110.1 and 110.2 shall not limit the transfers set forth below in 11 CFR 110.3(c) (1) through (6)—

(1) Transfers of funds between affiliated committees or between party committees of the same political party whether or not they are affiliated or by collecting agents to a separate segregated fund made pursuant to 11 CFR 102.6;

(2) Transfers of joint fundraising proceeds between organizations or committees participating in the joint fundraising activity provided that no participating committee or organization governed by 11 CFR 102.17 received more than its allocated share of the funds raised;

(3) Transfers of funds between the primary campaign and general election campaign of a candidate of funds unused for the primary;

(4) Transfers of funds between a candidate's previous Federal campaign committee and his or her current Federal campaign committee, or between previous Federal campaign committees, provided that the candidate is not a candidate for more than one Federal office at the same time, and provided that the funds transferred are not composed of contributions that would be in violation of the Act. The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred.

(i) "Previous Federal campaign committee" means a principal campaign committee, or other authorized committee, that was organized to further the candidate's campaign in a Federal election that has already been held.

(ii) "Current Federal campaign committee" means a principal campaign committee, or other authorized committee, organized to further the candidate's campaign in a future Federal election.

(iii) For purposes of the contribution limits, a contribution made after an election has been held, or after an individual ceases to be a candidate in an election, shall be aggregated with other contributions from the same contributor for the next election unless the contribution is designated for the previous election, or is designated for another election, and the candidate has net debts outstanding for the election so designated pursuant to 11 CFR 110.1(b)(3).

(iv) For purposes of this section, an individual ceases to be a candidate in an election as of the earlier of the following dates—

(A) The date on which the candidate publicly announces that he or she will no longer be a candidate in that election for that office and ceases to conduct campaign activities with respect to that election; or

(B) The date on which the candidate is or becomes ineligible for nomination or election to that office by operation of law;

(5) Transfers of funds between the principal campaign committees of an individual seeking nomination or election to more than one Federal office, as long as the conditions in 11 CFR 110.3(c)(5) (i), (ii) and (iii) are met. An individual will be considered to be seeking nomination or election to more than one Federal office if the individual is concurrently a candidate for more than one Federal office during the same or overlapping election cycles.

(i) The transfer shall not be made when the individual is actively seeking nomination or election to more than one Federal office. An individual will not be considered to be actively seeking nomination or election to a Federal office if:

(A) The individual publicly announces that he or she will no longer seek nomination or election to that office and ceases to conduct campaign activities with respect to that election, except in connection with the retirement of debts outstanding at the time of the announcement;

(B) The individual is or becomes ineligible for nomination or election to that office by operation of law;

(C) The individual has filed a proper termination report with the Commission under 11 CFR 102.3; or

(D) The individual has notified the Commission in writing that the individual and his or her authorized committees will conduct no further campaign activities with respect to that election, except in connection with the retirement of debts outstanding at the time of the notification;

(ii) The limitations on contributions by persons shall not be exceeded by the transfer. The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred. A contribution shall be excluded from the amount transferred to the extent that such contribution, when aggregated with other contributions from the same contributor to the transferee principal campaign committee, exceeds the contribution limits set forth at 11 CFR 110.1 or 110.2, as appropriate; and

(iii) The candidate has not elected to receive funds under 26 U.S.C. 9006 or 9037 for either election; or

(6) Transfers of funds from a candidate's campaign committee for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election, provided that the funds transferred are not composed of contributions that would be in violation of the Act.

(i) The cash on hand from which the transfer is made shall be considered to consist of the funds most recently received by the transferor committee. The transferor committee must be able to demonstrate that such cash on hand contains sufficient funds at the time of the transfer that comply with the limitations and prohibitions of the Act to cover the amount transferred. A contribution shall be excluded from the amount transferred if the making or acceptance of such contribution in connection with an election for Federal office is prohibited by the Act. The amount transferred per contributor shall not exceed the limitations on contributions set forth at 11 CFR 110.1 or 110.2, as appropriate. The campaign committee transferring the funds shall keep records of the sources of the funds in the account from which the transfer is made and, upon request, shall make such records available for examination by the Commission.

(ii) For purposes of the contribution limits, a contribution made after a nonfederal election has been held, or after an individual ceases to be a candidate in a nonfederal election pursuant to paragraph (c)(4)(iv) of this section, or after an individual has publicly announced that he or she is or will become a candidate in a particular election for Federal office, shall be aggregated with other contributions from the same contributor for that next election unless the contribution is designated for the previous nonfederal election or is designated for another election, and the candidate has net debts outstanding for the election so designated.

(iii) If a candidate's nonfederal campaign committee transfers funds exceeding $1,000 to such candidate's principal campaign committee or other authorized committee for a federal election, the nonfederal campaign committee shall become a political committee pursuant to 11 CFR 100.5(a) and shall file a Statement of Organization in accordance with 11 CFR 102.2 no later than ten days after transferring the funds. Such committee shall be subject to the recordkeeping and reporting obligations of 11 CFR parts 102 and 104 and shall disclose in its first report its cash on hand balance, the source(s) of such funds, and the amount transferred to the federal campaign committee. *See* 11 CFR 104.12. The funds transferred shall be deemed composed of the funds most recently received until the amount transferred is reached, excluding any amounts in excess of the contribution limits or the prohibitions of the Act. The nonfederal campaign committee shall itemize the source(s) of the funds transferred in a memo Schedule A as required by 11 CFR 104.3(a)(4). The first report may be the termination report under 11 CFR 102.3.

(7) The authorized committees of a candidate for more than one Federal office, or for a Federal office and a nonfederal office, shall follow the requirements for separate campaign organizations set forth at 11 CFR 110.8(d).

8. Section 110.4 is revised to read as follows:

§ 110.4 Prohibited contributions (2 U.S.C. 441e, 441f, 441g, 432(c)(2)).

(a) *Contributions by foreign nationals.* (1) A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State or Federal public office.

(2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.

(3) For purposes of this section, "foreign national" means—

(i) A foreign principal, as defined in 22 U.S.C. 611(b); or

(ii) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20);

(iii) Except that "foreign national" shall not include any individual who is a citizen of the United States.

(b) *Contributions in the name of another.* (1) No person shall—

(i) Make contribution in the name of another;

(ii) Knowingly permit his or her name to be used to effect that contribution;

(iii) Knowingly help or assist any person in making a contribution in the name of another; or

(iv) Knowingly accept a contribution made by one person in the name of another.

(2) Examples of "contributions in the name of another" include—

(i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made, *see* 11 CFR 110.6; or

(ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.

(c) *Cash contributions.* (1) With respect to any campaign for nomination for election or election to Federal office, no person shall make contributions to a candidate or political committee of currency of the United States, or of any foreign country, which in the aggregate exceed $100.

(2) A candidate or committee receiving a cash contribution in excess of $100 shall promptly return the amount over $100 to the contributor.

(3) A candidate or committee receiving an anonymous cash contribution in excess of $50 shall promptly dispose of the amount over $50. The amount over $50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.

9. Section 110.5 is revised to read as follows:

§ 110.5 Annual contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.4 and 11 CFR part 115.

(b) *Annual limitation.* No individual shall make contributions in any calendar year which aggregate more than $25,000.

(c) *Contributions made in a nonelection year.* (1) For the purposes of this section, "nonelection year" means a year other than the calendar year in which a particular election is held.

(2) For purposes of this section, any contribution to a candidate or his or her authorized committee with respect to a particular election made in a nonelection year shall be considered to be made during the calendar year in which such election is held.

(3) For purposes of this section, any contribution to an unauthorized committee which is made in a nonelection year shall not be considered to be made during the calendar year in which an election is held unless:

(i) The political committee is a single candidate committee which has supported or anticipates supporting the candidate; or

(ii) The contribution is earmarked by the contributor for a particular candidate with respect to a particular election.

(d) *Independent expenditures.* The annual limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) *Contributions to delegates and delegate committees.* The annual limitation on contributions in this section applies to contributions to delegates and delegate committees under 11 CFR 110.14.

10. Section 110.6 is revised to read as follows:

§ 110.6 Earmarked contributions (2 U.S.C. 441a(a)(8)).

(a) *General.* All contributions by a person made on behalf of or to a candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate.

(b) *Definitions.* (1) For purposes of this section, "earmarked" means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

(2) For purposes of this section, "conduit or intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee, except as provided in paragraph (b)(2)(i) of this section.

(i) For purposes of this section, the following persons shall not be considered to be conduits or intermediaries:

(A) An individual who is an employee or full-time volunteer working for the candidate's authorized committee, provided that the individual is not acting in his or her capacity as a representative of an entity prohibited from making contributions;

(B) A fundraising representative conducting joint fundraising with the candidate's authorized committee pursuant to 11 CFR 102.17 or 9034.8;

(C) An affiliated committee, as defined in 11 CFR 100.5(g);

(D) A commercial fundraising firm retained by the candidate or the candidate's authorized committee to assist in fundraising; and

(E) An individual who is expressly authorized by the candidate or the candidate's authorized committee to engage in fundraising, and who occupies a significant position within the candidate's campaign organization, provided that the individual is not acting in his or her capacity as a representative of an entity prohibited from making contributions.

(ii) Any person who is prohibited from making contributions or expenditures in connection with an election for Federal office shall be prohibited from acting as a conduit for contributions earmarked to candidates or their authorized committees. The provisions of this section shall not restrict the ability of an organization or committee to serve as a collecting agent for a separate segregated fund pursuant to 11 CFR 102.6.

(iii) Any person who receives an earmarked contribution shall forward such earmarked contribution to the candidate or authorized committee in accordance with 11 CFR 102.8, except that—

(A) A fundraising representative shall follow the joint fundraising procedures set forth at 11 CFR 102.17.

(B) A person who is prohibited from acting as a conduit pursuant to paragraph (b)(2)(ii) of this section shall return the earmarked contribution to the contributor.

(c) *Reporting of earmarked contributions*—(1) *Reports by conduits and intermediaries.* (i) The intermediary or conduit of the earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate (see 11 CFR part 105), and to the recipient candidate or authorized committee.

(ii) The report to the Commission, Clerk or Secretary shall be included in the conduit's or intermediary's report for the reporting period in which the earmarked contribution was received, or, if the conduit or intermediary is not required to report under 11 CFR part 104, by letter to the Commission within thirty days after forwarding the earmarked contribution.

(iii) The report to the recipient candidate or authorized committee shall be made when the earmarked contribution is forwarded to the recipient candidate or authorized committee pursuant to 11 CFR 102.8.

(iv) The report by the conduit or intermediary shall contain the following information:

(A) The name and mailing address of each contributor and, for each earmarked contribution in excess of $200, the contributor's occupation and the name of his or her employer;

(B) The amount of each earmarked contribution, the date received by the conduit, and the intended recipient as designated by the contributor; and

(C) The date each earmarked contribution was forwarded to the recipient candidate or authorized committee and whether the earmarked contribution was forwarded in cash or by the contributor's check or by the conduit's check.

(v) For each earmarked contribution passed through the conduit's or intermediary's account, the information specified in paragraph (c)(1)(iv) (A) through (C) of this section shall be itemized on the appropriate schedules of receipts and disbursements attached to the conduit's or intermediary's report, or shall be disclosed by letter, as appropriate. For each earmarked contribution forwarded in the form of the contributor's check or other written instrument, the information specified in paragraph (c)(1)(iv) (A) through (C) of this section shall be disclosed as a memo entry on the appropriate schedules of receipts and disbursements attached to the conduit's or intermediary's report, or shall be disclosed by letter, as appropriate.

(2) *Reports by recipient candidates and authorized committees.* (i) The recipient candidate or authorized committee shall report each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed $200 in any calendar year.

(ii) The report by the recipient candidate or authorized committee shall contain the following information:

(A) The identification of the conduit or intermediary, as defined in 11 CFR 100.12;

(B) The total amount of earmarked contributions received from the conduit or intermediary and the date of receipt; and

(C) The information required under 11 CFR 104.3(a) (3) and (4) for each earmarked contribution which in the aggregate exceeds $200 in any calendar year.

(iii) The information specified in paragraph (c)(2)(ii) (A) through (C) of this section shall be itemized on Schedule A attached to the report for the reporting period in which the earmarked contribution is received.

(d) *Direction or control.* (1) A conduit's or intermediary's contribution limits are not affected by the forwarding of an earmarked contribution except where the conduit or intermediary exercises any direction or control over the choice of the recipient candidate.

(2) If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the

earmarked contribution shall be considered a contribution by both the original contributor and the conduit or intermediary. If the conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the report filed by the conduit or intermediary and the report filed by the recipient candidate or authorized committee shall indicate that the earmarked contribution is made by both the original contributor and the conduit or intermediary, and that the entire amount of the contribution is attributed to each.

11. Section 110.8 is amended by revising paragraph (d)(2) to read as follows:

§ 110.8 Presidential candidate expenditure limitations.

* * * * *

(d) * * *

(2) No funds, goods, or services, including loans and loan guarantees, may be transferred between or used by the separate campaigns, except as provided in 11 CFR 110.3(c)(5).

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

12. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8) and 441b.

13. Section 114.5 is amended by revising paragraph (g)(1) to read as follows:

§ 114.5 Separate segregated funds.

* * * * *

(g) * * *

(1) A corporation or a separate segregated fund established by a corporation is prohibited from soliciting contributions to such funds from any person other than its stockholders and their families and its executive or administrative personnel and their families. A corporation may solicit the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families. For purposes of this section, the factors set forth at 11 CFR 100.5(g)(4) shall be used to determine whether an organization is an affiliate of a corporation.

* * * * *

14. Section 114.8 is amended by revising paragraph (g)(1) introductory text to read as follows:

§ 114.8 Trade associations.

* * * * *

(g) * * *

(1) A federation of trade associations is an organization representing trade associations involved in the same or allied line of commerce. Such a federation may, subject to the following limitations, solicit the members of the federation's regional, State or local affiliates or members, provided that all of the political committees established, financed, maintained or controlled by the federation and its regional, State, or local affiliates or members are considered one political committee for the purposes of the limitations in §§ 110.1 and 110.2. The factors set forth at §110.5(g)(4) shall be used to determine whether an entity is a regional, State or local affiliate of a federation of trade associations.

* * * * *

PART 9034—ENTITLEMENTS

15. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

16. Section 9034.4 is amended by revising paragraph (d) to read as follows:

§ 9034.4 Use of contributions and matching payments.

* * * * *

(d) *Transfers to other campaigns.* If a candidate has elected to receive matching funds and is simultaneously seeking nomination or election to another Federal office, no transfer of funds between his or her principal campaign committees or authorized committees may be made. *See* 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(c)(5) and 110.8(d). A candidate will be considered to be simultaneously seeking nomination or election to another Federal office if he or she is seeking nomination or election to such Federal office under 11 CFR 110.3(c)(5).

Dated: August 11, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-19337 Filed 8-16-89; 8:45 am]

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federal register

Thursday
August 17, 1989

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 121, and 125
Landing Gear Aural Warning; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121 and 125

[Docket No. 25991, Notice No. 89-20]

RIN 2120-AC82

Landing Gear Aural Warning

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the airworthiness standards for transport category airplane landing gear aural warning systems and the operating rules for using transport category airplanes to update the present requirements. This proposal is prompted by reports of nuisance or inappropriate aural warnings which have occurred in modern transport airplanes which adhere strictly to the present regulations. It is intended to align the regulations with existing design practices thereby removing the regulatory burden associated with making an equivalent level of safety finding or exemption, for those systems that do not meet the existing requirements. This proposal will not affect existing certificated airplanes.

DATES: Comments must be received on or before February 13, 1990.

ADDRESSES: Comments on this proposal may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked: Docket No. . Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch (ANM-111), Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25991." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Parts 25, 121 and 125 of the Federal Aviation Regulations (FAR) all contain similarly worded requirements for a landing gear aural warning system. The function of this system is to provide the flightcrew with an aural alert if the landing gear are not extended and locked at the appropriate time. Since the landing gear aural warning requirements of parts 25, 121, and 125 are similar, § 25.729(e) will be used as an example to describe the nuisance or inappropriate warnings that result when the present regulations are applied. Section 25.729(e), as amended by Amendment 25-42 (43 FR 2302; January 16, 1978), states, in pertinent part, that:

> (2) Landplanes must have an aural warning device that will function continuously when one or more throttles are closed, if the landing gear is not fully extended and locked.
>
> (3) If there is a manual shutoff for the aural warning device prescribed in paragraph (e)(2) of this section, the warning system must be designed so that, when the warning has been suspended after one or more throttles are closed, subsequent retardation of any throttle to or beyond the position for a normal landing approach will activate the aural warning.
>
> (4) Landplanes must have an aural warning device that will function continuously, when the wing flaps are extended beyond the maximum approach position determined under § 25.67(e), if the gear is not fully extended and locked. There may not be a manual shutoff for this warning device. The flap position sensing unit may be installed at any suitable location. The system for this device may use any part of the system (including the aural warning device) for the device required in paragraph (e)(2) of this section;

These regulations are very specific as to when the aural warning system should function. They are based on operation of early transport airplanes using reciprocating engines. Operation of modern jet transports in some situations causes the system to be activated when it should remain silent, thereby causing a nuisance warning. In order to preclude nuisance aural warnings, modern transport airplane aural warning system designs have used inhibits during some phases of flight. Consequently, an equivalent level of safety finding, or exemption from the operating rules, was required because these systems do not comply with the regulations as they now exist. This process is time-consuming and may result in type certification program delays. Complying fully with the existing regulations results in the following disadvantages:

a. The regulation requires an aural warning sound whenever the throttles are closed and the landing gear is not fully extended and locked. Since this often occurs at the start of descent, at an altitude which is inappropriate for gear extension, the warning sound is immediately cancelled by the crew. This unwarranted alert and the subsequent crew action causes flightcrew distraction.

b. If an engine fails on or immediately after takeoff, one action of the pilot is to raise the gear to minimize airplane drag, and to close the throttle on the failed engine. This can result in an immediate gear aural warning which is inappropriate for the situation and which may create a possibly dangerous distraction to the crew when they should be coping with an engine failure.

c. Section 25.729 requires the warning to sound when the flaps are extended to the approach setting if the gear is not fully extended and locked. This dates back to the days of piston-engined airplanes which had landing flap settings different from approach and takeoff flap settings. Today some airplanes have landing flap settings which are also used for approach or takeoff. Therefore, complying with the present rule results in a gear aural warning sounding when the gear is raised after takeoff and/or when approach flaps are selected. In addition, for some multiengine airplanes, no protection is provided by the existing regulations for one engine inoperative approach and landings where nonstandard landing flap settings and thrust levels are used.

Discussion

Revising the existing regulations to state the objectives without stating how the requirements would be met would allow manufacturers the latitude to use their ingenuity in designing systems so that nuisance and inappropriate aural warnings are minimized. The proposed revision would delete present § 25.729(e)(2) through (4) and substitute a new § 25.729(e)(2), which is discussed below. The lead-in to § 25.729(e)(2) would refer to "Airplanes." The reference to landplanes would be deleted because it has been determined that the rule should apply equally to seaplanes and amphibians with retractable gear. Existing seaplanes and amphibians would not be required to meet this new rule because their certification basis has already been established. However, the operating rules in parts 121 and 125 that require landing gear aural warnings do not make a distinction between landplanes and seaplanes. Therefore, this proposal would have no impact on seaplanes with retractable gear or floats that are intended to be operated in accordance with these rules. Seaplanes with retractable landing gear or floats certificated under the proposed new rule that are not designed to be able to meet these operating rules would be impacted by this proposed rule change. However, the FAA is unaware of any existing seaplanes that would fall in this category or of any plans to type certificate such seaplanes.

Section 25.729(e)(2) would require a gear-not-down aural warning for the flightcrew that functions continuously, or is periodically repeated. The existing requirement that the aural warning function continuously may be unduly distracting and disruptive to the flightcrew. The proposed rule would give the option of using a periodically repeated aural warning which may be less disruptive, and more effective, from the human factors perspective.

There would be a requirement that the aural warning be provided in sufficient time to allow for a go-around or gear extension and a landing. Under the existing rule, there is no means to inhibit the aural warning. Due to the fact that the throttles and/or flaps are in landing positions long before the touchdown, there is inherent assurance that the aural warning will be provided in sufficient time to allow for a go-around or gear extension and landing. With a means to inhibit the warning, as proposed, this inherent assurance would no longer be provided if the aural warning were not reactivated in sufficient time. The requirement is intended to maintain the same operational safety margins that are provided by the present regulations.

The system used to generate this warning must be designed to eliminate false or inappropriate alerts. The proposed performance standard is necessary to encourage innovative uses of state-of-the-art systems and sensors to solve the problem of nuisance alarms.

It must be shown that it is improbable that failures of systems used to inhibit the gear aural warning will prevent the warning system from operating. This requirement is necessary to provide an equivalent level of safety to the existing rule for a complex system with many interlocks and inhibits.

The aural warning shall not have a manual shutoff. Designing aural warning systems to eliminate foreseeable nuisance warnings eliminates the need for a manual shutoff.

Sections 121.289(a) and 125.187(a) would be amended by adding the following phrase at the beginning of the respective paragraphs: "Except for airplanes that comply with the requirements of § 25.729 of this chapter on or after [insert effective date of this amendment]." This amendment would recognize new airplanes meeting the new airworthiness requirements after the effective date of this amendment, while retaining the present airworthiness and operating requirements with respect to existing certificated airplanes.

Regulatory Evaluation

The proposed revisions to parts 25, 121, and 125 result in no compliance cost whatsoever to operators or to manufacturers of transport category airplanes other than seaplanes, certificated under the proposed new rules, that are not intended to be operated in accordance with parts 121 and 125. The proposed revisions to part 25 would, for the first time, require newly certificated transport category seaplanes that are not intended to be operated under parts 121 or 125, to be equipped with aural landing gear warnings. However, the FAA is not aware of any such seaplanes or of any plans for development of such seaplanes. Proposed §§ 121.289(a) and 125.187(a) state that, with the exception of transport category airplanes that comply with the requirements of § 25.729 on or after the effective date of this amendment, each transport category airplane must have a landing gear aural warning device that functions continuously under the conditions that are specified in those sections. This language would allow operators of airplanes type certificated before this amendment the option to comply with the new airworthiness requirements or, alternatively to remain in compliance with the present airworthiness requirements. Consequently, this amendment avoids imposing new requirements and potential compliance costs on existing certificated airplanes.

The proposed amendment relieves a burden on the aircraft manufacturing industry because the existing regulations do not accommodate modern technology and industry design practices currently employed in aircraft manufacture. The revised rule would save aircraft manufacturers the cost of requesting an equivalent level of safety finding from the FAA during aircraft type certification. This process is time consuming an can result in type certification program delays. The FAA is unable to accurately quantify this saving.

In summary, these proposals would make the regulations compatible with present industry practice with no change in operational safety. They also would enable aircraft manufacturers to comply with § 25.729 without asking the FAA for an equivalent level of safety finding, therefore affording manufacturers and the FAA some amount of administrative savings.

The proposals will have no impact on trade both for U.S. firms doing business

in foreign countries and for foreign firms doing business in the United States. No compliance cost or potential savings will affect the sale of foreign transport category airplanes in the United States or the sale of such U.S. airplanes in foreign countries. Since the certification rules are applicable both to foreign and to domestic manufacturers which sell in the U.S., there will be no competitive advantage to either.

While the proposals in this notice would directly affect those transport category airplane manufacturers who certify their airplanes under Part 25, Order 2100.14A states a size threshold of 75 employees as a standard for small manufacturers of aircraft. (See FAA Order 2100.14A, "Regulatory Flexibility Criteria and Guidance," dated September 16, 1986.) According to current FAA data, there are no transport category airplane manufacturers who meet that criteria. Therefore, there is not a significant economic impact on a substantial number of small entities.

The proposals in this notice also would affect small air carriers which are regulated under part 121 and part 125. However, since no compliance cost is imposed on carriers, there is not a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion:

For the reasons given earlier in the preamble, the FAA has determined that this document involves proposals which are not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and are not major as defined in Executive Order 12291. In addition, it is certified under the criteria of the Regulatory Flexibility Act that these regulations, at promulgation, would not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Safety.

14 CFR Part 121

Aircraft, Airplanes, Airworthiness, Pilots.

14 CFR Part 125

Aviation safety, Safety, Air carriers, Aircraft pilots, Airplanes, Pilots.

The Proposed Amendment

Accordingly, the FAA proposes to amend parts 25, 121 and 125 of the Federal Aviation Regulations (FAR), 14 CFR parts 25, 121 and 125, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub L. 97–449, January 12, 1983).

2. By amending § 25.729, by removing paragraphs (e)(3) and (e)(4), and by revising paragraph (e)(2) to read as follows:

§ 25.729 Retracting mechanism.

* * * * *

(e) * * *

(2) Airplanes must be equipped with a landing gear aural warning system that provides the flightcrew a gear-not-down aural warning that functions continuously, or is periodically repeated, in sufficient time to allow for a go-around or gear extension and a landing. The system used to generate this warning must be designed to eliminate false or inappropriate alerts. It must be shown that it is improbable that failures of systems used to inhibit the gear aural warning will prevent the warning system from operating. The aural warning shall not have a manual shutoff.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

4. By amending § 121.289 by revising paragraph (a) to read as follows:

§ 121.289 Landing gear: Aural warning device.

(a) Except for airplanes that comply with the requirements of § 25.729 of this chapter on or after [insert effective date of this amendment], each large airplane must have a landing gear aural warning device that functions continuously under the following conditions:

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

6. By amending § 125.187 by revising paragraph (a) to read as follows:

§ 125.187 Landing gear: Aural warning device.

(a) Except for airplanes that comply with the requirements of § 25.729 of this chapter on or after [insert effective date of this amendment], each airplane must have a landing gear aural warning device that functions continuously under the following conditions:

* * * * *

Issued in Washington, DC, on August 9, 1989.

M.C. Beard,

Director, Aircraft Certification Service.

[FR Doc. 89–19285 Filed 8–16–89; 8:45 am]

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2799/Pub. L. 101-81

To amend the Agricultural Act of 1949 for the 1990 crops to allow the planting of alternative crops on permitted acreage and to amend the provisions regarding the designation of farm acreage base as acreage base established for oats. (Aug. 14, 1989; 103 Stat. 563; 1 page) Price: $1.00

H.R. 2467/Pub. L. 101-82

Disaster Assistance Act of 1989. (Aug. 14, 1989; 103 Stat. 564; 25 pages) Price: $1.00

H.J. Res. 221/Pub. L. 101-83

To designate the week beginning September 1, 1989, as "World War II Remembrance Week." (Aug. 14, 1989; 103 Stat. 589; 1 page) Price: $1.00

S.J. Res. 55/Pub. L. 101-84

To designate the week of October 1, 1989, through October 7, 1989, as "Mental Illness Awareness Week." (Aug. 14, 1989; 103 Stat. 590; 2 pages) Price: $1.00

S.J. Res. 67/Pub. L. 101-85

To commemorate the twenty-fifth anniversary of the Wilderness Act of 1964 which established the National Wilderness Preservation System. (Aug. 14, 1989; 103 Stat. 592; 1 page) Price: $1.00

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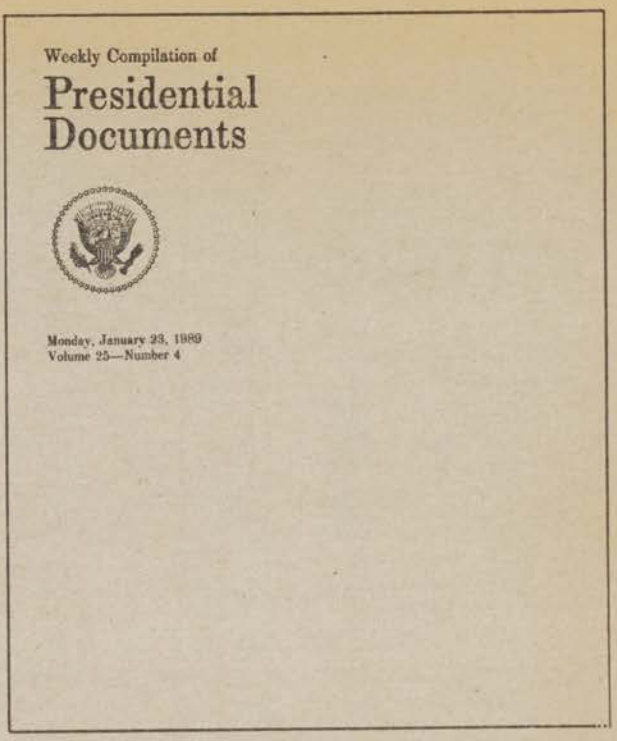

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